

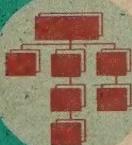
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MUNICIPAL

COUNCILLOR'S

MANUAL



Ministry of
Municipal
Affairs
Ontario

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The information was current at that time, but
for more up-to-date information on any specific
programs or legislation you should talk to your
municipal clerk or refer to the appropriate
legislation and any related publications.



MUNICIPAL COUNCILLOR'S MANUAL

*January 1989
Reprinted January 1992*



Ministry of
Municipal
Affairs
Ontario



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... INTRODUCTION

Your election to municipal government places you among a dedicated group of people whose contributions have been extremely successful in guiding the management and development of Ontario's municipalities.

Your role as a councillor today is becoming more and more complex, and you will find yourself dealing with a variety of contentious issues. Even the most seasoned councillor will run across questions that are new. Knowing where to go for information on the rules, regulations, requirements, and relationships of local government will help you fulfil your role. With this understanding and information you can meet your own and the municipality's goals and objectives, satisfy provincial and federal requirements, and provide better service to the residents of your community.

This manual is divided into five sections, corresponding to the five major components of your work as a municipal councillor.

Section I deals with the role of the municipal councillor. It is divided into three parts: the representative role, the policy-making role, and the managerial role.

Section II provides information on the legislative context of municipal operations. It covers the Canadian Charter of Rights and Freedoms, sources of law, the exercise of municipal powers, enforcement of by-laws, and actions against the municipality.

Section III takes a look at the fiscal context. Topics include sources of municipal revenue - tax on real property, transfer payments, other local revenue sources - the need for financial management, the development of a capital financing policy, the municipal auditor, and the audit function.

Section IV gives an overview of community land use planning and the role of the elected representative in the planning process.

Finally, Section V looks briefly at the municipality in its constitutional setting as it interacts with local boards, associations, and the other levels of government. It also covers municipal structure and functions.

A list of additional references is given after each section. You can also refer to our publication "The Book Guide", which describes all of the current ministry publications dealing with these issues. For information about your particular municipality, talk to the municipal staff and the experienced members of your council.



Section 1

… THE ROLE OF THE MUNICIPAL COUNCILLOR

Introduction

The main purpose of this manual is to give you a broad understanding of the many roles you must fulfil. We hope that it will also be a handy reference source, enabling you to quickly locate the basic information you need to meet the challenge of governing at the local level.

After a few weeks in office you may think that getting elected was the easy part. You likely feel overwhelmed by the variety of matters demanding your attention and the little time available to deal with them. To make the most effective use of that time, you need to have some idea of your duties and the time those duties should take.

The Municipal Councillor and the Strategic Plan

As a councillor you have a representative, a policy-making, and a managerial role to play in your municipality, but you cannot fulfil any one of those roles in a vacuum. You will be called on to consider and make decisions on issues that will often be complex and controversial. Most of those decisions will have long-term consequences for your municipality and should be made in the context of the municipality's long-term directions.

A strategic plan is an essential part of the management process. It is a document that looks to the future, clearly setting out the municipality's vision and priorities and how it intends to achieve them. Becoming familiar with your municipality's strategic plan is an effective way of understanding both the organization and

the broader environment in which you will be working. All of your administrative, financial, and planning decisions should reflect and support the strategic plan.

Decisions, both popular and unpopular, are more easily made when seen in the context of the municipality's broader, long-term strategy. The plan is a framework that encourages consistency in municipal decision-making among both councillors and staff. When developed with public input, the plan represents a shared view of the municipality's future and encourages public commitment to achieving it.

Not all municipalities have a strategic plan. If yours doesn't, you should think about its advantages and encourage your colleagues on council, the municipal staff, and the public to work together to develop and implement one.

The Representative Role

At first glance, the representative role appears to be fairly simple and straightforward. But what does it involve?

Probably the first thing to consider is your mandate as a municipal councillor, and here there are at least two different viewpoints.

One is that you were elected by your constituents to represent their views as closely as possible when dealing with issues that come before council.

The other is that election to office requires you to have a broader understanding of the issues. On many of them you will have to consider a variety of conflicting interests and make decisions that will not be popular with everyone. According to this view you should use your judgement and

Strategic planning is an essential part of good management

think about the best interest of the whole community.

In practice, there is no single, correct approach to the representative role, and on most issues you will find that you fall somewhere between the two viewpoints.

You will quickly develop a case load of citizen enquiries that will need to be investigated and, if possible, resolved. Some of you will attract these enquiries because of your background and interests, others of you because of issues in your particular wards. If you are effective in resolving problems and become identified as "caring" and "helpful", you can expect increasing public attention. Enquiries can often be screened and redirected to the appropriate agencies, but most citizens will want the personal attention of their elected representative. Indeed, many of you will feel that this is one of your most important roles.

To deal effectively with enquiries, make yourself aware of current council policies. You will frequently be approached by people who claim that an existing policy is too rigid. Their arguments will often seem to make sense because the application of a general policy is likely to have an uneven effect as time passes and individual circumstances vary. Although you may want to find some way of helping, you should be careful and refer to municipal staff if you're unsure about a policy. Established policy usually prevails, and a councillor who has made promises that cannot be kept may lose credibility with the citizens and strain the working relationship with staff.

Instead of becoming too involved with citizen enquiries, council may want to consider establishing a policy for resolving issues that arise again and again. This will allow council and the individual members to give more time

and thought to long-term planning to meet the future needs of the community.

However approachable or sympathetic you try to be, you really represent your constituents by providing the services, programs, and regulations that they need. Your representative role cannot be considered in isolation from your policy-making and overall managerial responsibilities.

The Policy-Making Role

Policies provide direction for the municipality's operations, and policy-making is another of council's key responsibilities.

Many council decisions are routine, dealing with the ongoing administration of the municipality, but others establish general rules to guide future actions. Those are considered policy decisions. Some policies can be specific, such as a by-law requiring dogs to be kept on leashes in public areas, and others can be broader and more general, such as approval of an official plan.

How is POLICY MADE?

• Ideally, policy-making involves a number of steps that require council to:

- identify an issue that needs to be dealt with,
- reach agreement on the facts of the issue and the objectives to be met,
- identify alternative solutions and analyze them thoroughly,
- make a decision based on the choices available and develop a policy,
- implement the policy through municipal staff.

In practice, however, policy-making is often less rational and orderly because of:



- rapid change, the complexity of issues facing local government, and the difficulty in singling out problems which require attention and priority,
- the lack of time to identify all possible alternatives and to conduct detailed research and analysis,
- the legal and financial limits on what council may do,
- the complexity of implementing policies and developing appropriate mechanisms to monitor their administration.

Council is the policy-making body of the municipality. The administration is responsible for carrying out council's policy decisions. The two roles would appear to be distinct, but there can often be a lot of overlap. Although staff are responsible for implementing a policy, council must keep track of what staff are doing to ensure that the policy is being carried out as it intended and as effectively as possible.

Many policy suggestions will come from staff, whose experience makes them an obvious source of ideas. Few municipalities, however, have enough staff resources for detailed research and analysis of policy issues. One of the challenges facing all councillors is to use the municipality's resources to make the policy-making process as broadly based and rational as possible.

The importance of documenting municipal policies is becoming more and more apparent. Many municipalities have developed policy manuals to provide a basis for sound decision-making and to ensure that policies are implemented in a consistent way. The manual is

a reference and information source for council, the administration, and the public. Because the policies and procedures it contains cover all of the municipality's functions and responsibilities, the manual can also be a valuable training and orientation tool for both new councillors and new staff.

The Managerial Role

Council has the final responsibility for ensuring that the municipality's financial and personnel resources are used as efficiently as possible and in a way that is consistent with council's objectives.

Council must ensure that:

- policies adopted by council are being implemented;
- staff are administering services and programs as council intended;
- rules and regulations are being applied correctly and consistently;
- funds are being spent only as authorized, with the most efficient possible use being made of the municipality's human and financial resources.

There is a fine line between council's overall management of the municipality and the administration's management of day-to-day activities.

Council must monitor the implementation of its approved policies and programs, but the practical aspects of their implementation and administration are the staff's responsibility.

Several things must be done before council can monitor and measure the municipality's administrative effectiveness and efficiency. With

Understand the different roles of councillor and administrator

input from municipal staff, council should:

- define corporate objectives and set goals and priorities,
- establish clear administrative policies,
- provide specific guidelines and directions to staff on the application of those policies,
- delegate council responsibilities within the scope of the Municipal Act,
- establish a personnel management policy that emphasizes the recruitment, evaluation, training, and development of staff,
- develop standards to measure administrative activities,
- establish a policy and procedures for staff to report to council on administrative activities.

By establishing and following such guidelines, council will be free to deal with broader issues affecting the municipality as a whole and to:

- become less involved in day-to-day details,
- deal with exceptional situations,
- concentrate on identifying and changing outdated policies and operating procedures,
- develop staff potential and improve staff morale.

COUNCIL-STAFF RELATIONS

Many municipalities realize the importance of council-staff relations. Some councils have established programs that require employee input to operational policies and procedures. Programs like this recognize the experience and expertise that staff have. They also encourage communication between staff and management and between management and council.

Of increasing importance to municipal staff and councillors is the need for continuing education. Many municipalities have developed a written policy on training and educational opportunities

for staff, setting out the types of courses the municipality will support and how much of the course fees and related costs will be reimbursed. It is in the municipality's best interest to encourage and provide training and development because effective administration relies on the knowledge and skills of the staff. As a councillor, your interest in the municipality's human resources should equal your interest in its financial resources. This philosophy should be fostered by council and senior management alike.

The same applies to the training and education of elected officials. Several courses and seminars are offered for both newly elected and experienced councillors through the various municipal associations and through several educational institutions.

The Ministry of Municipal Affairs offers grant programs to encourage and assist municipal staff and councillors to attend courses on municipal management. The ministry also works with municipalities, municipal associations, and educational institutions to develop programs and materials that will enhance municipal education and training. Talk to your clerk, chief administrative officer, or human resources manager for information on these programs.

When considering the performance of municipal staff, council should try to identify reasonable expectations and observe the extent to which those expectations are being met. When performance falls short of expectations, additional training, other ways of doing the work, or changes to duties and responsibilities should be considered.

To assist staff in meeting council's expectations, council should:

- provide a comprehensive description of individual duties and responsibilities,



- understand today's increasing demands on staff,
- be properly prepared for council meetings,
- provide clear policy decisions and directions,
- apply policies in an objective and consistent manner,
- adopt policies that complement and reinforce staff efforts to improve administrative operations,
- consult with staff before deciding on policies and programs,
- provide orientation to new staff,
- establish a staff training and development policy.

Staff in turn should:

- provide well-organized agendas, with supporting materials,
- provide sufficient, timely information and analysis to make council's decision-making easier,
- notify council of changes to legislation and programs,
- provide policy advice, including options, their impacts, the cost-benefits in human and financial terms, and recommendations,
- notify council immediately of any unintended or unexpected impacts of policy decisions.

Municipal Organization

WHO'S IN CHARGE OF WHAT?

- ... It is essential to your role as councillor to know how your municipality delivers services and how the administrative structure and your relationships with staff and even with other councillors can contribute to effective and efficient delivery.

Many municipalities operate on a decentralized committee system where the central administrative focus is vested in council. Others employ a centralized system using a chief administrative officer (CAO) to co-ordinate day-to-day operations.

In a decentralized administration, depending on the size of the municipality, departments are separate and specialized units. They are usually headed by specialists, all with equal status and authority within the organization. For example, the finance department may be headed by an accountant, public works by an engineer, and planning by a professional planner.

One problem with this system is that there may be a tendency to become preoccupied with the needs of a particular service area rather than the overall needs of the municipality. Individual departments usually work closely with a corresponding provincial ministry, a relationship that may be strengthened by provincial grants for related programs. These factors may work against a co-ordinated municipal operation.

Another disadvantage of a decentralized system is that each department usually submits its reports separately to council. Council must then analyze the reports in the context of the overall operations so that sound decisions can be made. This process can be time-consuming and other tasks may suffer.

In many municipalities the clerk provides administrative leadership, over and above his or her statutory duties, by:

- serving as resource person to council, to committees of council, and to various local boards,
- co-ordinating correspondence and other contacts between the municipality and the outside world,

- acting as advisor on precedents,
- providing general financial advice, with responsibility for accounting and financial reporting activities (if the clerk is also the treasurer).

The clerk is in a good position to exercise administrative leadership. As with the position of head of council, however, much will depend on the individual's personal skills and on the working relationship that has developed between the clerk and council.

STANDING COMMITTEES

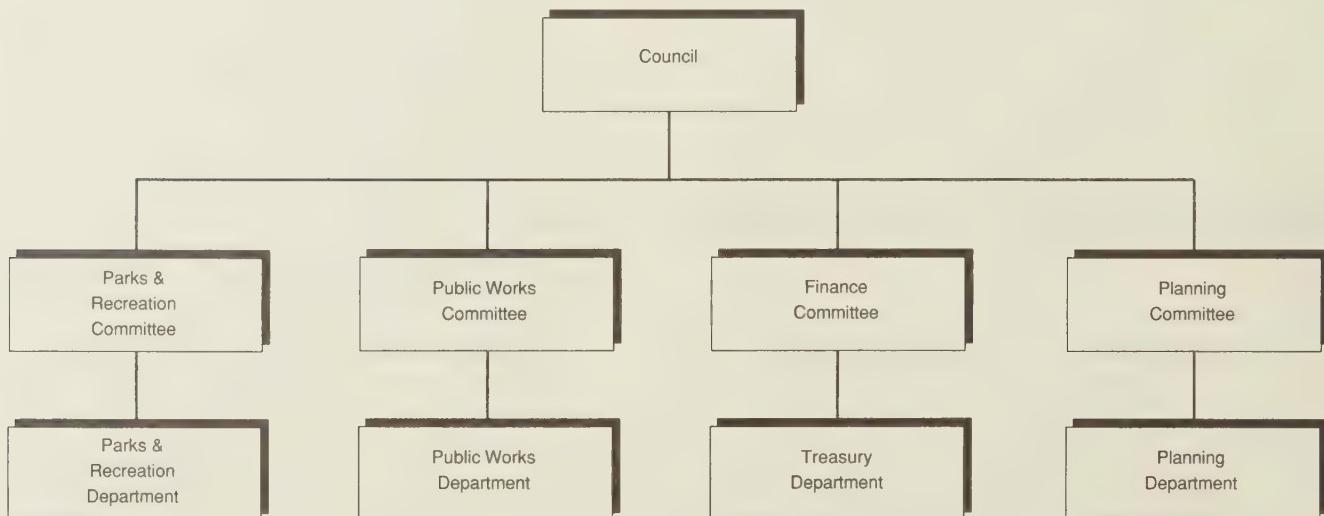
... Some municipalities use standing committees of council, each responsible for a major function in the municipality. The Municipal Act does not expressly authorize council to appoint such committees, nor does it indicate their duties. However, it does implicitly recognize their existence by authorizing payments to their members.

The main purpose of these standing committees is to oversee the operations of one or more municipal departments and to make reports and recommendations to council on policy matters referred to them. In this way they can provide support and expertise in handling council's increasingly heavy workload. Rather than trying to be experts in all facets of the municipality's operations, councillors appointed to one or two standing committees can focus on those committees' areas of concern. This arrangement considerably reduces the need for lengthy discussion at council meetings, allowing council to review reports and make decisions more quickly.

Standing committees can also facilitate public participation. Handling delegations at the committee level provides a less threatening atmosphere for citizens and allows more time for considering agenda items at council meetings.

But the system does have its disadvantages. For one, councillors may become too involved in

STANDING COMMITTEE SYSTEM





matters that are really staff responsibilities. Some municipalities may also have too many standing committees superimposed over a departmental structure that was created in an "ad hoc" way as the municipality took on additional responsibilities over time.

More and more of the issues facing council have broad implications that cross traditional departmental and standing committee lines. Considering these issues may involve referrals to a number of standing committees. Many municipalities have therefore consolidated their committees into two or three covering "hard services", such as roads, water, and sewage services, and "soft services", such as social services and libraries. This usually allows each committee to focus on policy-making and advice.

COMMITTEE OF THE WHOLE

... A variation of the committee system is called a committee of the whole, or general committee system. There are no standing committees, but

council meets as a committee of the whole, or general committee. One of the councillors usually assumes the chair instead of the head of council. Because there are no standing committees, all councillors have the opportunity to discuss the issues.

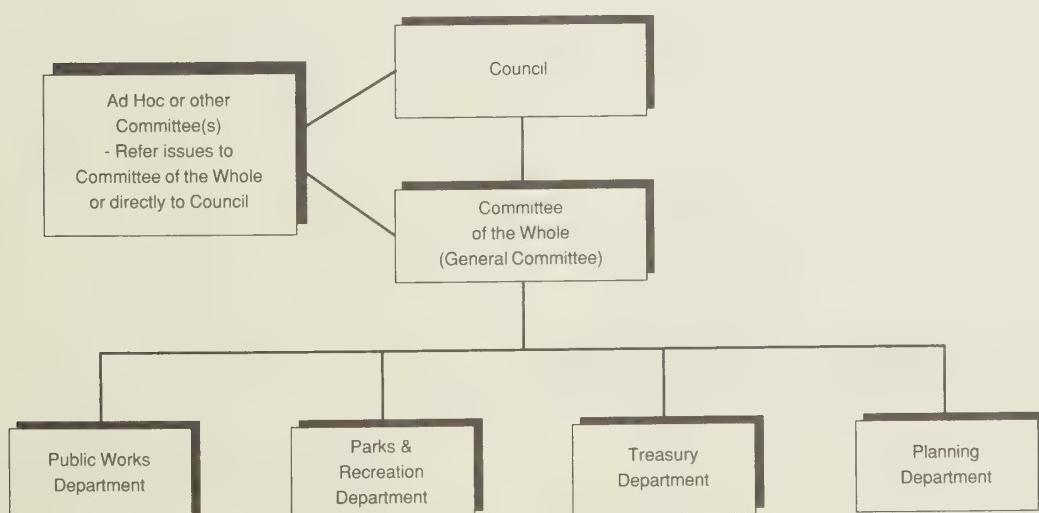
The advantages of this system are that:

- discussions are facilitated and delegations are handled more informally;
- decisions can be ratified at the regular council meetings without a lot more discussion;
- council can handle an increasing workload without having to establish a number of standing committees or meet an excessive number of times.

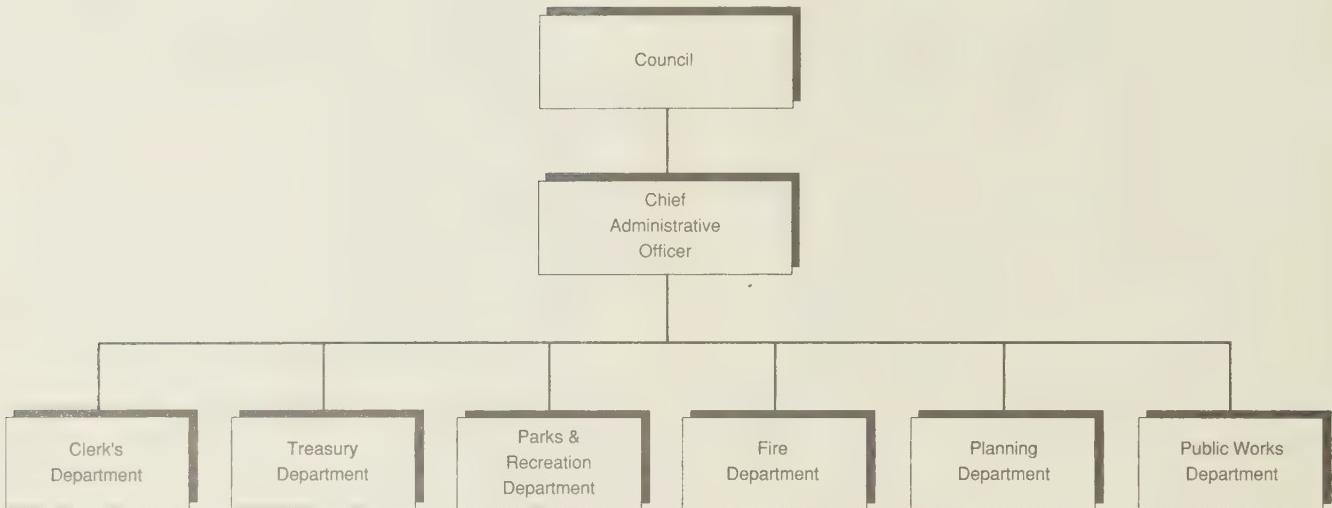
ADMINISTRATIVE OFFICER SYSTEMS

... **The Clerk-Administrator** Municipalities seeking some form of formal administrative co-ordination often expand the responsibilities of the clerk, using the new title of clerk-administrator. The position is usually

COMMITTEE OF THE WHOLE SYSTEM



C.A.O. SYSTEM



responsible for co-ordinating all of the other departments' activities.

The Chief Administrative Officer Under this system, council delegates administrative responsibilities to a professional administrator who directs and co-ordinates the activities of all departments. This structure aims at a complete separation of policy formulation from policy implementation, with council concentrating on policy and delegating implementation to the administrator.

In 1972 the Municipal Act was amended to provide council with the option to appoint by by-law a chief administrative officer, who carries out the general functions described above.

citizens and delegations seeking some action from their municipal representatives, it is important that the best possible use be made of council's time.

HEAD OF COUNCIL

... As the chief executive officer of the municipality, the head of council has special responsibilities under the Municipal Act. The head of council is called a chair or chairperson in regional and metropolitan municipalities, a warden in counties, a mayor in cities and towns, and a reeve in villages and townships. The Municipal Act gives the head of council several rights and responsibilities:

- to preside at all meetings of council,
- to expel or exclude any person guilty of improper conduct at the meeting,
- to ensure that the laws governing the municipality are properly executed and obeyed,

Council Procedures and Practices

How council's meetings are conducted and how effective they are depends on its rules of procedure and the personalities involved. With increasingly complex issues, and with more



- to supervise the conduct and performance of all officials of the municipality and to ensure that any negligence, carelessness, or violation of duty is prosecuted and punished,
- to communicate to council any information or recommendations necessary for the good government of the municipality,
- to sign all by-laws, debentures, and promissory notes on behalf of the municipality.

USE OF PROCEDURE BY-LAWS

... Municipalities are increasingly using procedure by-laws to govern the workings of council. Such by-laws can provide some assurance that all councillors will have the right to debate matters before them. They also help to ensure that matters are dealt with consistently and that everyone involved in a council meeting is aware of the ground rules.

A simple by-law covering the main points of procedure that usually cause differences of opinion or interpretation in the conduct of council business would cover such things as:

- meetings,
- absence of the head of council,
- quorum,
- curfew,
- duties of the presiding officer,
- agenda,
- minutes
- petitions and delegations,
- discussing and passing by-laws,
- motions,
- rules of debate,

- conduct of the members of council,
- suspension of the rules of procedure,
- reconsidering previous decisions.

A procedure by-law can also be a useful introduction for new councillors. The simpler the by-law, the easier it will be for new councillors to become familiar with its provisions and applications.

Council's failure to follow its procedure by-law does not invalidate an action. In any case, the by-law normally provides that council may suspend any of its requirements. A situation that is not covered by the by-law is normally dealt with under the long-established rules of parliamentary procedure.

COUNCIL AGENDAS

... While the rules of procedure and the effectiveness of the chairperson influence the flow of discussions, the content of the discussions is determined by the agenda. Most councils use some form of agenda listing the issues to be dealt with at council meetings. A typical agenda might include:

- disclosure of interest (ie. potential conflict of interest),
- minutes of the previous meeting,
- petitions and delegations,
- correspondence,
- reports from municipal officers,
- reports from committees,
- unfinished business,
- by-laws,
- motions and notices of motions,
- new business,
- adjournment.

A lot depends on how the agenda is set and the supporting materials that accompany it. Here again, practices vary. In some instances, especially in smaller municipalities, matters may be informally added to the agenda as they arise, even during the course of the meeting. The agenda in this case is at best a general guideline.

Especially in larger municipalities, on the other hand, there may be stricter requirements for including items on the agenda. For example, delegations may not be allowed to appear on the agenda unless they notified the clerk a certain number of days in advance, and other agenda items must first have appeared as a notice of motion at the previous council meeting. This type of approach is more structured.

In some municipalities the agenda will be prepared by the head of council and in others by the clerk. In still others the agenda will depend on the flow of reports and recommendations expected from council's various standing committees. Probably the most common approach is for the clerk to prepare the agenda based on discussions with the head of council and the CAO and taking into account any:

- business arising from previous meetings,
- referrals from the head of council or other members,
- reports from council committees,
- delegations or citizens seeking an audience with council,
- correspondence or other items that require council's attention.

CORRESPONDENCE

- ... Correspondence addressed to or concerning

council should be presented to council for discussion and possible action. In some municipalities a distinction is made between correspondence requiring council's attention and correspondence that is for information only. The agenda would normally reflect this distinction. Correspondence requiring council's consideration is usually attached to the agenda.

REPORT FORMAT

- ... The responsibility for ensuring that information provided to council is correct is usually delegated to the chief administrative officer or the clerk. This may require that staff anticipate councillors' information needs and provide background and research information, possibly with recommendations or options for council's consideration.

The use of a standard reporting format is beneficial in all municipalities. Reports to council should be organized, with:

- an executive summary (if the report is long or detailed),
- a description of the topic,
- the background to the issue and its origin,
- an analysis of the issue,
- a description of any existing policy related to the issue,
- options for dealing with the issue,
- any financial considerations,
- recommendations.

DOCUMENTING AND IMPLEMENTING DECISIONS - KEEPING MINUTES

- ... Council's discussions should result in decisions. The minutes of meetings form the official record



of a decision. The Municipal Act, section 77(1)(a), requires the clerk "...to truly record in a book, without note or comment, all resolutions, decisions and other proceedings of the council". As a result, minutes usually contain a list of motions and the decisions that were made, but provide only a brief summary of the discussions that took place.

It is also useful to keep a separate record of any follow-up action arising from a meeting and who is responsible. Once responsibilities have been assigned, council should ensure that the necessary action is being taken.

The most significant decisions made by council are those which result in legislation governing the municipality. Council must therefore consider carefully all of the implications of a decision and must follow through to ensure that the decision has been implemented.

It is also useful to keep minutes of committee meetings. Even though decisions of committee meetings are not official until approved by council, minutes can be important for future reference and guidance.

Dealing with the Public

Public involvement is fundamental to local government. Local government is closest to the people, most aware of their needs and concerns, and most sensitive and responsive to public opinion. It is therefore important that there be extensive public involvement in municipal operations.

Apart from this general statement, there are several practical reasons to involve the public. An involved public is better informed about the

Public involvement is fundamental to local government

processes, issues, and complexity of local government, recognizes the contributions of elected and appointed officials, sees the value of participating, and may turn out in larger numbers at the polls.

TYPES OF PUBLIC INVOLVEMENT

... A member of the public can become involved in the operations of local government in several ways:

- by serving as a volunteer,
- by being appointed to a local committee or board,
- by voting in local elections,
- by running for local office,
- by taking an active interest in local government activities, either as an individual or as a member of a citizens' group.

VOLUNTEERS IN LOCAL GOVERNMENT

... Volunteers represent a valuable source of additional manpower for local governments. If volunteers are to be effective, however, the municipality should plan for their use just as it does staff.

- Before volunteers are recruited, think carefully about the jobs they will perform and what satisfaction they can expect.
- Volunteers need to be oriented to the municipality, its goals, organization, methods of work, philosophy, and future plans. They should receive information about ongoing activities and be involved in any policy or program reviews.
- Effective supervision of volunteers is important. They should be given feedback and information on future opportunities.

Their achievements should be recognized and their potential developed. Measurable objectives and comprehensive job descriptions should be used, and supervisors should be skilled in performance appraisal.

THE CITIZEN AS APPOINTEE

••• Special purpose boards and commissions are widely used in Ontario. Many citizens are involved in local government as appointees to these bodies. Some are also involved as citizen appointees to committees of council, helping councillors handle heavy workloads. Many of them are specialists in certain areas. How are these specialists selected?

Advertising in local newspapers for volunteers with specific skills is one method. Word-of-mouth, where individuals are selected because they are well known in the community, is another. Former municipal councillors and staff may also be valuable because of their understanding of local government.

HANDLING CITIZEN DELEGATIONS

••• In some small municipalities there are few limits on public participation. Citizens can arrive at any point during a council meeting and often be allowed to address council at the earliest opportunity.

In some large municipalities, however, delegations do not have the opportunity to address the full council but are referred to the appropriate standing committee. Most municipalities require that delegations give prior notice of their wish to appear and limit the number of speakers and the length of speeches. Setting out procedures for handling delegations in a procedure by-law assures that council business will proceed in an orderly manner and that citizens will have their say.

Another practice is to allow any delegation that has not given prior notice to be heard at the end of the meeting, unless a specified adjournment time has been set. It is reasonable to assume that most delegations will give advance notice rather than sit through an entire council meeting before being heard. Council has the added choice of suspending its adjournment rule (usually by a two-thirds vote) if it feels that a particular delegation should be heard beyond the normal time for adjournment.

Many residents attend council meetings not as delegations but simply as citizens interested in the municipality. Meetings should be set up to facilitate public understanding and involvement. Space may be a key factor. Council should try to provide as much room as possible to accommodate the public. Extra copies of the agenda and a brief background statement of each item should also be provided.

HANDLING CITIZEN COMPLAINTS

••• Complaints represent a special type of public involvement. They may be warning signals of problems with the municipality's programs or services. If ignored, the situation may worsen. If handled effectively, the complainant may develop a more positive attitude toward the municipality and future problems may be avoided.

Tact and objectivity are important when a complaint is received. A written record of each complaint can be used for follow-up, identifying patterns in the number of complaints about particular programs or services or in a particular neighbourhood. Standard procedures for handling complaints should be developed and applied consistently. Whatever the finding, a brief report should be made and the complainant should be notified as quickly as possible.



IMPROVING THE MUNICIPALITY'S PUBLIC IMAGE

- How are citizens encouraged to take an interest in local government, vote regularly, attend meetings even occasionally, follow issues in the local media, and become actively involved in the resolution of local issues?

Citizens will develop a positive attitude toward the municipality if they are aware of and understand its activities. The main sources of information about the municipality have traditionally been the minutes of council meetings and the annual audited financial statements, but other communication techniques can be used.

It is useful to identify the various "publics" being served when developing new methods of communication. They will include business groups, cultural and ethnic groups, homeowners, labour unions, professional groups or associations, senior citizens, tenant associations, and sports groups. All have their own needs and expectations, although there may be some overlap because many people will belong to more than one.

Once the "public" has been identified, a municipality can use different reporting media and methods, including:

- printed reports and newsletters,
- public addresses,
- exhibits and tours,
- radio, television, and press coverage.

Factors that affect a municipality's image range from specific policies adopted by council, such as a zoning by-law, to the effectiveness of its administrative procedures and methods of operation. It is therefore important to review all points of contact with the public.

In most municipalities it is the staff, not councillors, who have more frequent contact with the public. The larger the municipality, the more public contact the line staff will have. On a day-to-day basis it is the by-law enforcement officer, the switchboard operator, the clerk in the tax department, or the groundskeeper in the parks department who can have the greatest influence on the municipality's public image.

Staff who receive frequent public enquiries, whether by telephone or across a counter, need to be well informed about the municipality and its operations. They should be able to give prompt and complete answers. Vague responses or referrals to other departments give the citizen the impression of being given the run-around. A fact sheet might be developed to help staff deal with frequently asked questions.

Local Government Week held each year, is an excellent opportunity to increase public interest in your municipality's activities. By encouraging participation in regular and special events throughout the week, council can increase the community's understanding of municipal government and its awareness of local issues.

Promotional material for Local Government Week is distributed each year by the Association of Municipalities of Ontario (AMO) and the Ministry of Municipal Affairs. Events in your municipality could include an open house at city hall or some other municipal facility or talks at local schools.

Dealing with the Media

At times relations with the media can be strained or unsatisfactory. The political activities of local, provincial, and federal governments often compete for media coverage, but municipalities can improve their coverage by establishing a well-thought-out communications policy. In particular:

- Know what is newsworthy. Many local government activities may not seem important to the media. Point out why particular items should be covered.
- Be aware of timing when releasing a news story. Become familiar with deadlines faced by reporters. Hold briefings with sufficient time for reporters to assess the information before preparing their stories.
- Give the reporters some credit for intelligence. Explain why you cannot answer a certain question. Educate the media about the issues and about municipal operations.
- Fit the release to the media.
- Put the local media on the mailing list for your newsletters. Send each local newspaper/newsroom/news director and editor or city hall reporter a copy of the council agenda prior to the scheduled meetings.
- Don't play favourites; include all the media when releasing news items.
- Establish a policy on news releases.
- Think before you yell. It is almost impossible to win a dispute with the media. Letting the matter die quietly is often the best response.

*Your relationship with the media
is important*

In larger municipalities establishing a formal public relations office might facilitate media relations. If that's not feasible, many of the services normally provided by such an office could be carried out less formally. It may be sufficient to identify where those services are currently being handled. This review may prompt an extension of public relations activities even if no formal communications department is set up.

NEWS RELEASES

... Regardless of the size of the municipality, council-media relations are important and it is up to you to try to influence that relationship.

Members of the press can be helpful or less helpful, but keeping them informed rules out unfounded speculation and unwarranted criticism.

One way of doing this is through news releases. Having a consistent policy on news releases will ensure that you:

- inform the press about all meetings and explain why any meetings are closed,
- provide the same background material that council will use to make its decisions,
- inform the press about what has happened between meetings so that they understand why and how decisions were made,
- establish a working relationship with members of the press,
- exercise judgment and discretion in the comments you make.



Freedom of Information and Protection of Privacy

The Municipal Freedom of Information and Protection of Privacy Act came into effect on January 1, 1991. It gives any person a right of access to records in the control of a municipality or local board. It also requires a municipality to protect the privacy of individuals by regulating the collection, use, and release of personal information.

Conflict of Interest

All members of municipal councils and local boards, whether elected or appointed, are expected to place public interest before their own private advantage. The Municipal Conflict of Interest Act is intended to prevent an individual from receiving financial benefit as a result of his or her position on a municipal council or local board. It is essential that councillors read and understand this legislation and are fully aware of their responsibilities under the act.

When this manual was being revised, the conflict of interest legislation was under review. To ensure that you have the most up-to-date information, you should talk to your clerk and refer to the most recent legislation and any related publications.

The main points of the Municipal Conflict of Interest Act, 1983 are that:

- Each member of council must determine his/her obligations under the act.
- If a member thinks he/she has a financial interest in a matter being considered by council, he/she must also determine if it is a direct or indirect

Council members must put the public interest before their own private advantage

interest. If the member or the member's family or business associates (as defined in the legislation) have any financial interest, a conflict of interest may exist.

- If the member determines that there is a financial interest, the member should refer to section 4 of the act to determine whether the interest is one that is excepted by the legislation.
- If the member has any doubts about whether there is a financial interest and whether it can be excepted, the member should seek legal advice from a solicitor.
- If the member's interest cannot be excepted under section 4, the declaration of interest must be made as follows:
 1. disclose the interest and its general nature at the meeting before any discussion on the matter takes place,
 2. refrain from taking part in the discussion of the matter,
 3. make no attempt to influence the voting at any time before, during, or after the meeting, and
 4. refrain from voting on the matter.
- If the matter in which the member has a financial interest is discussed at a meeting closed to the public, the member must declare the interest as outlined above and must also leave the meeting, or that portion of the meeting dealing with the matter.
- If the matter in which the member has a financial interest is discussed at a meeting the member has not attended, it is the member's duty to declare the interest in the appropriate manner at the first meeting attended afterward.

Only a court can determine if there has been a contravention of the act. If there is a possible financial interest, you should refer directly to the legislation, and, where appropriate, obtain legal advice.

Indictment Under the Criminal Code

Individual councillors or employees of the municipality may be indicted under the Criminal Code for fraud, a breach of trust, or bribery. Elected and appointed representatives of municipal councils and local boards may also be indicted under the Criminal Code for accepting any benefit as consideration for corrupt voting practices, failure to perform official acts, and selling, purchasing, or negotiating appointments to office.

References - Section 1

Allingham, J. and Ben Ciprietti. *Let's Talk About It.* Burlington, Ontario: A Different Drummer Books, 1976. (This is a citizen's handbook on the workings of local government written by two councillors from the City of Burlington.)

City of Burlington. *Strategic Planning: A Process that Works.* Burlington, Ontario, 1991.

Ministry of Citizenship and Culture. *Working with Volunteer Boards, A Facilitator's Handbook.* Toronto, 1983.

Ministry of Municipal Affairs. *The Chief Administrative Officer System in Ontario.* Toronto, May 1982.

Rogers, Ian MacF. *Municipal Councillors Handbook.* (4th edition) Toronto: Carswell, 1982.

Tindal, C.R., and S.N. Tindal. *Local Government in Canada.* Toronto: McGraw-Hill Ryerson, 1984.

Your municipality may also have documents which will provide you with valuable information, such as:

- a procedure by-law,
- by-laws appointing the CAO and other senior staff,
- a municipal organization chart.

Section 2

…COUNCILLORS AS LAW MAKERS

Introduction

Perhaps the biggest way councillors can “leave their mark” on a municipality is through their legislative record. The kind of community in which we live depends largely on the policies established by council, the programs and services it provides, and the regulations it imposes on everything from noise control to licensing business operations.

Most new councillors are aware of this role and may in fact have run for office partly from a desire to provide some new service or to improve an existing one. They may want to legislate for a better community or they may want to reduce government controls in the name of greater freedom for the individual. Whatever their initial intentions, however, they must be aware of the various legal limitations on municipal powers.

Legal Constraints on Exercising Power

The most fundamental limitation arises from the subordinate constitutional position of local government. Under the British North America Act of 1867 (now the Constitution Act, 1982), the local level of government is given neither specific responsibilities nor a guaranteed right to exist.

Instead, the constitution stipulates that provincial governments have the right to pass laws respecting the creation and existence of municipal government. Because they are provincial creations, municipalities may do only what they have been authorized to do by the provincial government. A number of consequences follow from this:

- *Council's policies and programs determine the kind of community we live in*

- A provincial government can give to a municipality only those powers which it can exercise itself within the division of federal and provincial powers under the Constitution Act.
- A municipal by-law cannot override a provincial statute, and a by-law which was valid when passed may become invalid if an overriding provincial statute is later enacted.
- A municipal by-law cannot encroach on matters within the jurisdiction of the federal government.

If a municipality takes action for which it does not have statutory authority, or that exceeds the limits of its authority, the courts could quash the action as being “ultra vires”, that is, beyond the powers of the municipality.

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

There is a further constitutional limitation on local government, whose impact is not yet clear. Part 1 of the Constitution Act, 1982, contains the Canadian Charter of Rights and Freedoms. The Charter imposes limits on all levels of

government, including municipalities, in passing by-laws and taking other action. For example, a by-law regulating signs and posters could be challenged on the basis of “freedom of expression”.

Sources of Law

Councillors should make every reasonable effort to be sure of the statutory power for any action which they plan to undertake. This means trying to keep up-to-date with the ever-changing body of law affecting municipal activity. Yet a municipal councillor cannot be

expected to be a legal expert. Nor can the clerk, although that individual is often called upon as a general source of legal advice.

Given the complexity of the law, the municipality should consult its solicitor whenever any legal question is in doubt. At the same time, however, it is useful for councillors to have at least some familiarity with the sources of municipal law, if only to understand legal opinions given by the solicitor.

STATUTE LAW

General Acts The most important source of law affecting a municipality is found in the statutes, or legislation, enacted by the province. In Ontario the most significant is the Municipal Act, through which the provincial government attempts to provide for the general needs of all non-regional municipalities.

There are several other statutes that cover all municipalities but are concerned with specific activities, such as the Planning Act or the Line Fences Act.

Acts Specific to An Individual Municipality Most of the major, restructured municipalities have their own special acts that deal with their needs in the same way that the Municipal Act relates to other municipalities. The various regional acts, such as the Regional Municipality of Ottawa-Carleton Act or the Municipality of Metropolitan Toronto Act, are examples.

Private Acts Numerous private acts have been passed for specific municipalities. These are not part of the provincial government's legislative program, but result from applications by individual municipalities to obtain specific powers not found in the general acts. These private acts give flexibility in the way particular municipalities deal with issues that are of concern only to them.

Federal Statutes Despite the constitutional division of powers, there are also some federal statutes, like the Canada Mortgage and Housing Corporation Act, that affect municipal activities.

A list of sources for existing provincial statute law is included in the references at the end of this section. To stay abreast of new legislation, councillors should talk to the clerk, who receives the first reading municipal bills sent to all municipalities by the Ministry of Municipal Affairs with requests for comments.

ADMINISTRATIVE LAW

Administrative Law includes decisions by boards and tribunals and the interpretation and exercise of powers delegated by legislation to bodies other than the legislature.

Boards and Tribunals Boards and tribunals are part of the executive branch of government, but they are empowered by statute to exercise decision-making authority which overlaps with the authority traditionally vested in the courts. The Ontario Municipal Board, for example, acts in a quasi-judicial capacity when it holds hearings on such matters as long-term borrowing, planning, and boundary adjustments involving territory without municipal organization. Similar bodies with which municipalities may have dealings include the Ontario Labour Relations Board, the Workers' Compensation Board, the Assessment Review Board, and the Conservation Review Board.

Decisions of these boards form administrative case law that can be significant for municipal operations.

Delegated Legislation - Regulations & Minister's Orders Because of the volume and complexity of activities now being undertaken by governments, the legislature often lacks the



time and technical knowledge needed to enact a law in all of the detail that would be required. Moreover, if legislation is being extended into some new area of government activity there is often a need to ensure sufficient flexibility to adapt the law to rapidly changing circumstances. It has therefore become usual to enact statutes that are general in nature and that authorize some body in the executive branch of the provincial government (perhaps the Cabinet, a particular minister, or a provincial board especially created for that purpose) to elaborate the law over time as the need arises. This is usually done through regulations.

Regulations could cover important forms, such as the election forms required under the Municipal Elections Act, or set out specific standards for the Ontario Building Code and programs like the Ontario Home Renewal Program (OHRP).

CASE LAW

... Even if a municipality is aware of all statutes affecting its operations and of all relevant administrative law, it may have a far from complete picture of its legal position on any specific issue. The actual meaning and scope of these laws may have been significantly affected by various court decisions over the years, and this "judge-made law", or "case law", must also be taken into account.

It must be emphasized, however, that non-experts should not attempt to apply case law. Interpretation of the significance and possible applications of court decisions should be left to a person trained in the law. This body of law is almost constantly being refined and modified by court decisions. Reliance on a particular case could therefore be quite misleading.

Exercising Municipal Powers

There are several matters to be addressed and considered when exercising municipal powers. It is difficult to determine the best order in which to describe these issues, but the following outline appears to have a logical sequence:

- calling and conducting meetings,
- by-laws and resolutions,
- procedural requirements and necessary conditions,
- administering and enforcing by-laws.

MEETINGS

... The municipality's affairs are transacted at council meetings, for which there are several important considerations.

Powers of the Corporation The powers of the corporation must be exercised at a meeting properly called and constituted. Even if all councillors agree individually with a certain course of action, this unanimous position is not valid and cannot bind the corporation unless expressed at a meeting of council.

Such meetings can be either regular or special. The number and the timing of regular meetings is up to council, although the date by which the first meeting after an election must take place is set by statute. By their nature these meetings are usually held at regular intervals and at designated locations. Their timing and number may be set out in the procedure by-law.

Special meetings, as their name implies, are called to deal with particular, urgent matters which may arise from time to time. They must be called if requested either by the head of council or by a petition to the clerk from a majority of the councillors. Many municipalities require a

minimum amount of time between sending the notice of a special meeting and holding the meeting. They also require that the notice clearly state the purpose of the meeting.

Public Business is the Public's Business Public demand for greater openness and access has become a major issue at all levels of government. To support this demand at the local level, the statutes make certain provisions about the conduct of meetings and the public's right to attend them.

Section 55 of the Municipal Act states that the regular meetings of every council and of every local board, except boards of commissioners of police and school boards, must be open to the public and that no person may be excluded except for improper conduct. To encourage openness and participation, council meetings should be held in a public forum.

Special meetings may be either open or closed as the public interest dictates, but this decision is made by the council, not the head of council or any individual member, and must be expressed by a written resolution. Since the public interest can only be determined at the time of each special meeting, any resolution or by-law which declared all special meetings to be closed would presumably be invalid.

Since council is not permitted to meet in a closed, or "in camera" session, it sits as a committee to discuss matters it considers confidential. Closed special or committee meetings allow candid discussion of some issues before a specific course of action is recommended, but they should be used with discretion and only to deal with sensitive issues

like legal, personnel, or property matters. Many municipalities have passed procedure by-laws that set out the types of issues that may be discussed at a closed meeting. Recommendations made by the committee in a closed meeting must then be ratified by council.

When this manual was being revised, amendments to the Municipal Act that would set clear principles and guidelines for openness, particularly for disposal of land, were being considered.

Committee of the Whole The committee of the whole (or general committee) consists of the full council, with one of the councillors usually

assuming the chair in place of the head of council.

Committee of the whole has often been used as a procedural device for obtaining an "in camera"

discussion, but you must bear in mind that no corporate business may be transacted in committee of the whole. Matters can be discussed and recommendations can be voted upon in committee, but they must be reported back to council for consideration and possible action. In summary, committees can recommend action, but only council can approve that action.

Hearings Some meetings (for example, a meeting about dismissing of an officer), may be considered a "hearing" within the meaning of the Statutory Powers Procedure Act. In such instances, the legislation imposes the following minimum rules for proceedings. These rules take precedence over the normal provisions of the municipality's procedure by-law.

- All proceedings are to be held in public unless otherwise ordered for reasons of public security or to protect confidentiality.

- All parties are entitled to proper notice and are entitled to attend any hearing to submit evidence and to answer arguments.
- A record of the proceedings, including any documents by which the proceedings were commenced, notice of any hearing, documentary evidence, a transcript, if any, of oral evidence, the decision, and reasons for the decision, where reasons have been given, is to be compiled.

Quorum A quorum is needed to conduct council business. A quorum, as defined by the Municipal Act, section 56, is a majority of the full council membership, including the head of council. In addition:

- If a seat is vacant because of death or resignation, the quorum is still calculated on the basis of the full membership.
- If a council cannot make up a quorum for a period of two months or more, the minister may declare all of the members' seats vacant and require an election.
- If a council consists of only five members, at least three of them must vote in favour of a resolution or other measure before it is considered to be carried.
- Members who are ineligible to vote because of a conflict of interest cannot be counted when determining whether there is a quorum. If there are not enough members as a result, the Municipal Conflict of Interest Act provides that the remaining members, if there are at least two, will constitute a quorum.
- If a quorum cannot be reached, section 7 of the act states that a court order must be obtained to conduct corporate business.

The powers of the council must be exercised by by-law

BY-LAWS AND RESOLUTIONS

... The powers of the municipal corporation are exercised by either by-law or resolution. By-laws are the primary form of action, and the Municipal Act requires that, except where otherwise provided, the powers of the council must be exercised by by-law. All by-laws must be:

- signed both by the head of council or presiding officer of the meeting at which the by-law was passed and by the clerk,
- under the seal of the corporation.

There may be other special requirements which have to be met before a by-law can be passed, such as approval by the electors, approval by a provincial ministry or board, public notice by advertising, or individual notice to any persons affected.

Many council decisions are also recorded in a resolution, which is simply an expression of a decision or wish of council. It is submitted in the form of a motion and adopted by majority vote. The formalities for adopting a resolution are not as strict as those for passing a by-law. Resolutions usually deal with routine administrative and internal management matters.

They may also be used to record council's views on a specific issue. Many such resolutions express municipal concerns about existing provincial regulations and controls or call for changes in the provincial-municipal relationship. After adoption they are sent to the appropriate provincial authority.

Generally, the powers of the council are exercised by by-law for more important matters or for actions that will affect the public. If in

doubt, passing a by-law is always the safest approach since courts have on occasion invalidated council actions which were expressed only by resolution. The courts have held that a by-law is necessary if the action to be performed is a legislative act, but that a resolution may be sufficient if the action involves discharging a statutory responsibility and a by-law is not specified. Because of the uncertainties involved, some councils pass a confirming by-law at the end of a meeting to confirm all of the actions taken at the meeting.

PROCEDURAL REQUIREMENTS

••• Council must ensure that it follows proper procedures in enacting or amending by-laws. It must be in session, and there must be a quorum in attendance and voting. The meeting must be a regular meeting of council, a reconvened regular meeting that had been properly adjourned, or a special meeting. If a special meeting, the notice of the meeting must have given considering and passing, or amending, the by-law as one of its purposes. No by-law may be passed or amended in committee of the whole.

A person who has a conflict of interest should not discuss or vote on a by-law or resolution. If the presiding officer has a conflict, the chair should be given up to an acting presiding officer for purposes of debate and voting. Section 7(1) of the Municipal Conflict of Interest Act does permit the quorum to be reduced from its usual number in certain instances.

While there is nothing to prevent passing a by-law on the day it was presented to council, council should observe proper and usual procedures in introducing such a by-law. If the

municipality's customary procedures or its procedure by-law require advance notice of the introduction of a by-law, that notice should be given in each instance. Some by-laws cannot be passed at one sitting because of statutory restrictions and are presented for first reading for approval in principle only. Among the latter would be drainage by-laws and construction/debenture by-laws.

Notice of intention to pass some by-laws, such as a road closing by-law, is a statutory prerequisite. Any affected member of the public may have the right to speak to council.

LIMITS ON COUNCIL DECISIONS

••• Largely as a result of court decisions, council actions must meet several conditions.

Good Faith Council's action must not be based on fraud, oppression, or improper motive. While such a restriction seems sensible, the question of what constitutes a proper motive may be unclear and is a matter of court interpretation.

Public Interest If a municipal power is exercised only to serve the interest of private persons, the action would normally be quashed by the courts. It is council, however, that determines what is in the public interest. If council, in its pursuit of the public interest, takes an action which benefits a private person, it need not follow that the action is not in the public interest.

Reasonableness Under the Municipal Act a by-law passed by council within its powers and in good faith is not open to question by the courts because of any supposed unreasonableness in its provisions. The courts have held, however, that unreasonableness might be evidence of bad faith and in this way have justified their continued

Council determines the public interest

review of questions of reasonableness. A by-law may also be subject to review and attack for unreasonableness under the Canadian Charter of Rights and Freedoms.

Impartiality Some council actions involve discrimination because they aren't applied equally. The court response has been that there must be a statutory basis for any discrimination and that treatment must be impartial within the same group affected by an action. For example, council may discriminate by allowing certain types of shops to remain open and requiring all others to close but cannot allow shops of one type to open while others of the same type must close. As another example, council cannot limit the number of service stations in one or some parts of the municipality but can limit the number in the whole municipality.

There are some situations in which council is authorized by statute to discriminate; in its power to give or to withhold a licence, for example. While the Municipal Act states that council's action in such matters is not open to question or review by the courts, the courts have declared that council, in exercising its discretionary power over licences, may only consider "relevant factors" as determined by the courts. As noted above, the equality rights provision of the Canadian Charter of Rights and Freedoms now entrenched in the constitution may be used in court challenges of any apparently discriminatory activities by a municipality.

Delegation Another limitation on the exercise of authority is the extent to which powers can be delegated. The Municipal Act, section 9, states that the powers of a municipal corporation shall be exercised by its council. This provision has been widely interpreted as prohibiting the delegation of council's authority.

In practice, however, the courts have differentiated between a municipality's legislative and administrative functions. While legislative functions cannot be delegated unless explicitly permitted by statute (a committee of adjustment, for example, can grant minor variances from zoning by-laws), the administrative functions can be delegated in the absence of any statutory provisions to the contrary. As a rule of thumb, administrative responsibilities can be delegated by council if it is good business practice to do so.

Enforcement of By-laws

Given all of these legal complexities, it would be understandable for councillors, upon enacting a by-law, to breathe a sigh of relief that the task has finally been completed. Not so! All the effort will have been for nothing unless the municipality has the determination and the means to enforce the by-law. Before a by-law is passed, councillors should give careful consideration to the implications of enactment.

- What will be the by-law's impact on the community?
- Will it impose restrictions or hardships on particular areas or groups of people and how will council deal with the public reaction?
- What will be the cost of administering the by-law? Can existing staff reasonably be expected to take on the additional responsibilities, or will more staff be required?
- Is council prepared to enforce the by-law and to enforce it consistently?

GENERAL RESPONSIBILITY FOR ENFORCEMENT

••• **Action Initiated by Citizens** A municipality may enact a by-law with no intention of providing municipal staff to enforce it. Council assumes that if a ratepayer wants the by-law enforced, the ratepayer will bring the alleged offender before the courts. To do so, the ratepayer must appear before a justice of the peace or provincial judge and "lay an information", a sworn document setting out the details of the offence.

Action By Citizens and Police When citizens are unwilling to enforce compliance, they and council often call on the local police force, which under the Police Services Act must enforce municipal by-laws. If there is no local force, council may enter into an agreement with the OPP to enforce by-laws. But keep in mind that the police already have extensive responsibilities. Wherever possible, council should look at other means of enforcement.

Action by Citizens and Enforcement Personnel Council may decide to hire by-law enforcement personnel, an action which assures effective control over by-law enforcement. Council must decide, however, whether by-law enforcement personnel will act only on complaints or will actively look for infractions. In either case, the municipality will benefit from by-law enforcement officers who have diplomacy, tact, and negotiating skills because most complaints are settled out of court.

PROSECUTIONS

••• Prosecutions for most by-law infringements are governed by the Provincial Offences Act. Offences carry a maximum fine of \$5,000 except where otherwise provided by law.

Simplified procedures under Part I of the act allow the municipal by-law enforcement officer

(now designated as a provincial offences officer) to issue a ticket for which set fines and wordings have been established. The wording must comply with the provisions of sections 3 and 13 of the act, and the fines must be approved by the Chief Judge of the Ontario Court (Provincial Division). When Part I proceedings are used, the maximum fine is \$500 and no term of imprisonment may be imposed. When there are no set fines, a summons may be issued on the spot. The defendant can plead guilty and pay in advance, plead guilty and appear before a justice of the peace with an explanation, or plead not guilty and have a trial.

Major offences are generally prosecuted under Part III of the act. A court appearance is mandatory and other remedies may be used by the courts. Parking offences are covered in Part II.

PENALTIES

••• Section 61 of the Provincial Offences Act states that a person who is convicted of an offence is liable to a fine of up to \$5,000 unless other legislation prescribes a different penalty. The Municipal Act, for instance, specifies that by-laws licensing and regulating body-rub parlours and adult entertainment parlours can provide for a maximum fine of \$25,000 for an individual and \$50,000 for a corporation.

RESTRAINING ACTIONS

••• Under section 327 of the Municipal Act, the municipality or a ratepayer may take action to restrain contraventions of a by-law. An injunction can be granted at the discretion of the courts but is rarely given. A typical situation would be an injunction sought to restrain breaches of zoning by-laws where a fine was not enough to deter the person.



Section 326 of the Municipal Act allows a judge of the Ontario Court (Provincial Division), upon convicting a person of a by-law offence, to make an order prohibiting the person from continuing or repeating the offence. A person contravening such an order could be subject to contempt proceedings or a charge under the Criminal Code and could be sent to prison. Similar provisions for prohibition orders are found in the Planning Act, section 67(3) in connection with convictions for contraventions of zoning by-laws.

FORCED COMPLIANCE AND RECOVERY

••• Another method of enforcement is provided by section 325 of the Municipal Act, which states that if council has the authority to direct or require a person to do something, and it is not being done, council may undertake the work itself. The municipality may recover any costs involved by action or by assessing the lands in question with the cost.

Actions Against the Municipality

There are also various methods by which citizens can take action against a municipality.

ULTRA VIRES

••• Under section 139 of the Municipal Act, a resident of the municipality or a person interested in a by-law passed by its council may apply to the Ontario Court (General Division) to quash the by-law in whole or in part on the grounds that it is contrary to law. An application can also be brought under the Judicial Review Procedure Act to have a by-law declared invalid.

As a practical matter, many councillors distinguish in their own minds between those matters which are "ultra vires" because they

have not been authorized and those which are illegal because they are expressly forbidden by or contravene legislation. In the former case, councils sometimes find themselves faced with a local need to which they can respond only by taking action for which they lack specific authority. They may be inclined to take such action, expecting that a satisfied public is unlikely to question its legality. They may also expect the provincial government to acknowledge the need for such municipal authority by enacting legislation to validate the actions that have been taken.

Council should bear in mind, however, that local need, no matter how compelling, cannot substitute for proper legal authority. If the courts are resorted to in such a situation, they will quash the municipal action as "ultra vires" regardless of how well-intentioned it was.

CIVIL ACTION FOR DAMAGES

••• As a corporation, the municipality may be sued for failure to carry out, or negligence in the conduct of, its statutory duties. Damage to vehicles caused by poorly maintained roads or an injury suffered in a fall on an icy sidewalk could result in a civil suit. Council should ensure that the municipality has adequate insurance to cover this type of civil action.

Given the generality of some of the complaints which may be brought against a municipality, however, both the legislature and the courts have imposed certain restrictions to protect the municipality from litigation. For instance, use of a highway must conform with the law, and in one case a truck owner's suit against a municipality for improperly maintained roads was thrown out because his truck exceeded the statutorily prescribed width. Section 284 (4) of the Municipal Act limits potential municipal

liability for injury caused by snow or ice on a sidewalk to cases of “gross negligence”.

Risk Management More and more municipalities are recognizing the need for a proactive approach to addressing public liability and are adopting strategies in risk management. In general terms, risk management is a systematic approach to minimizing the effects and costs of public liability suits against the municipality. It involves identifying potential hazards and implementing the appropriate measures to reduce or eliminate them.

Since the biggest areas for potential liability within municipal activities are usually public works or parks and recreational facilities, risk management initiatives tend to concentrate on those areas.

“Municipal Risk Management”, a publication produced by the Municipal Finance Officers Association of Ontario (MFOA), provides an in-depth discussion of risk management, with information on issues such as loss control, claims administration, and purchasing insurance.

In addition to civil litigation, a municipality could be indicted under the Criminal Code for committing a common nuisance and could be fined should any municipal action (or inaction) endanger the health, safety, comfort, or property of any individual.

APPEALS

••• Where specifically allowed by the statutes, an individual may appeal municipal decisions to the courts and to certain quasi-judicial bodies such as the Ontario Municipal Board and the Assessment Review Board. Several examples arise in the planning field, with appeals from decisions of such bodies as committee of

adjustment, land division committee, and council itself.

JUDICIAL REVIEW

••• This form of relief, examples of which have been given above, is limited to situations in which a municipality or local board proposes to act or has acted without power or beyond its powers or has refused to exercise a power which is mandatory. In these circumstances an individual may take action to bring the matter before the courts for a legal remedy.

Conclusion

After even this brief summary of municipal law, the complexity of the subject is evident. However, a few suggestions for the new councillor - and indeed all councillors - in dealing with this topic may help.

1. Be aware of the legal limitations within which the municipality must operate and the need for legal advice.
2. Don't expect municipal staff, however knowledgeable, to provide legal advice; that is the responsibility of the municipal solicitor.
3. Do not use the various legal limitations and complications as an excuse for inaction. Instead, become more familiar with them so that you can work within them to achieve your objectives for your municipality. When receiving constant advice on what cannot be done, seek out advice on how things can be done differently.
4. Familiarize yourself with provincial legislation, particularly the Municipal Act and the Planning Act, as it relates to your municipality.



5. Review your municipality's by-laws to become more familiar with your existing legislative authority.
6. Support the development or enhancement of a basic municipal law library (see the end of this section). Such materials may seem costly, but they can be acquired over time and can provide inexpensive "preventive medicine" compared to the difficulties in which the municipality and its officials could find themselves.
7. Ensure that insurance coverage is obtained to protect both staff and councillors in the exercise of their duties. There is legislative authority for councils or boards to provide legal liability insurance or to reimburse the costs and expenses incurred by a member involved in any court action or other proceeding, including a conflict of interest action, if the member is found not to have contravened the act. This insurance would cover, for example, a municipal employee who provides information to a member of the public who then uses such information to the employee's detriment. With the increase in litigation involving municipal governments, insurance should be considered an inexpensive form of protection.
8. Take care to formalize proceedings where appropriate and to document the municipality's activities thoroughly and systematically. For example:
 - Ensure that job descriptions are complete and up-to-date. This can be important in protecting municipal staff who may have to show that they were acting within the terms of their employment if a question of legal liability arises.
 - Encourage the preparation of more detailed records than have traditionally

appeared, subject to the limitations imposed by the Municipal Act.

It is also important, however, that a municipality not lose the ability to respond quickly to situations, a flexibility which sets it off from the senior levels of government. It is a matter of striking a balance in these matters and building in adequate protection for the rights of both the citizens and municipal personnel.

References - Section 2

Makuch, Stanley M. *Canadian Municipal and Planning Law*. Toronto: Carswell, 1983.

Ministry of Government Services. *Ministerial Responsibility for Acts*, published annually.

Ministry of the Attorney General. *The Provincial Offences Act and Municipal Law Enforcement: Instructional Manual*, June 1982.

Municipal Finance Officers Association of Ontario. *Municipal Risk Management*, 1988.

Rogers, Ian MacF. *Canadian Law of Municipal Corporations*. Toronto: Carswell: two volumes, looseleaf, updated three times a year.

Rogers, Ian MacF. *Municipal Councillor's Handbook* (5th edition). Toronto: Carswell, 1988.

Auerback, Steven and James, Andrew. *The Annotated Municipal Act*. Toronto: Carswell: two volumes, looseleaf.

STATUTE LAW

Statutes of Ontario (S.O.): produced annually, they contain a table of contents listing both public acts and private acts enacted during that year's legislative session.

Revised Statutes of Ontario (R.S.O.): compiled at the end of each decade, this consolidation of public acts is arranged alphabetically according to title with a comprehensive index in the final volume.

Ontario Statute Citator: updated on a regular basis, the citator is a cumulative record of any changes made in Ontario Statutes since the most recent Revised Statutes of Ontario, and also contains an index to regulations in force.

ADMINISTRATIVE LAW

Ontario Municipal Board Reports. Toronto: Carswell.

Municipal Planning and Law Reports. Toronto: Carswell.

Ontario Gazette: published weekly, the Gazette contains recently enacted regulations.

Revised Regulations of Ontario (R.R.O.): a consolidation of regulations published approximately every ten years.



... THE FISCAL CONTEXT

Introduction

Since the 1970s it has been commonplace to talk about the financial constraints on local governments. Largely because of urban growth, municipalities face greatly increased expenditure demands. In order to meet those demands, local governments must manage their finances effectively. In particular, they should:

- have an effective cash management system,
- have an effective budgeting system,
- have effective capital financing policies, and
- conduct regular reviews of programs, services, and delivery methods.

Sources of Municipal Revenue

Municipal revenues fall into four categories:

- property taxes,
- payments in lieu of taxes,
- conditional and unconditional grants,
- other revenues.

PROPERTY TAXES

The property tax is the main source of revenue over which the municipality has direct control. It consists of two key components: a tax base and a tax rate.

Assessment (Tax Base) The base for property taxation is the assessment roll. The Assessment Act authorizes the valuation of real property and outlines the procedures for making the valuations. It defines those classes and types of properties which are subject to taxation and

Local governments must manage their finances effectively

those which, although assessed, are exempt from taxation. In some cases, municipal councils are authorized to exempt certain properties from taxation. The Municipal Act and, for special circumstances, private legislation also authorize municipalities to exempt taxes.

Assessment, the key to property taxation, has posed some difficulties. Different local practices had led to differences in the assessment of similar properties within and between municipalities. In an attempt to provide some consistency, the province developed equalization factors to convert local assessment figures to a more standard base. These factors are used in the determination of provincial transfers and the calculation of county and regional apportionments, that is, the distribution of county and regional financial requirements among the supporting lower-tier municipalities. The local taxable assessment is still used to levy local taxes.

To eliminate these variations in assessment, the province assumed responsibility for the assessment function in 1970 with the intention of introducing market value assessment. Many municipalities have already gone to full market assessment using section 70 of the Assessment

Act, which mandates uniform assessment across all property classes. Municipalities can also request a reassessment under section 63 of the Assessment Act, which provides for a uniform reassessment of all properties within each class: residential, multi-residential, commercial, and industrial. No change is made in the total assessed value of that class. For example:

A residential class of property with a total assessed value of \$25 million and a total

market value of \$73.5 million might have individual properties assessed from 15% to 50% of their market value. After a section 63 reassessment the total assessed value for that class of property would still be \$25 million, but each individual property would be assessed at 34% of its market value (\$25 million/\$73.5 million).

Business properties are assessed for both business and realty taxes. The owner is assessed for the property and those who conduct business on the property are assessed at a set percentage of the realty assessment. The percentages are set out in the Assessment Act, section 7.

Mill Rate (Tax Rate) A mill rate is a tax rate applied to each dollar of taxable assessment to determine the amount of taxes to be paid. In simpler terms:

- 1 mill raises \$1 on each \$1,000 of assessment.
- There are several purposes for which mill rates may be required:
- general municipal
 - upper tier (region, county, or district municipality)
 - public school board
 - separate school board
 - French public school board (where applicable)
 - French separate school board (where applicable).

For each of these purposes there are two mill rates: one applied to residential and farm assessment and one applied to commercial, industrial, and business assessment.

Property tax is the main source of revenue

Area rates or special charges (charges that are not usually applied to all assessed properties in the municipality) may be required for such things as local improvements or utilities.

Mill Rate Differential For all purposes, including schools, the mill rate on residential and farm assessment is 85% of the rate on commercial assessment. This 15% differential is one of several measures designed to provide relief to residential taxpayers.

For school purposes the authority for this differential is contained in the Education Act, subsection 222(1), and for all other purposes in the Ontario Unconditional Grants Act, subsection 9(3). The Education Act, subsection 222(3), further provides that a separate school board shall determine the rates to be levied for separate school purposes. This means that the separate school board tells the municipality what rates to levy on separate school assessment, but the residential and farm assessment must still be 85% of the commercial assessment.

LEVY FOR GENERAL MUNICIPAL PURPOSES

... The amount to be raised through taxation is determined when council adopts its annual budget. Estimated revenues from all sources other than property taxes, including any available surplus from the previous year, are deducted from the estimated total expenditures and the balance is the amount to be levied. Similarly, any deficit from the previous year is added to the total expenditures to calculate the levy.

The requirement to take any surplus or deficit into account is contained in the Municipal Act, subsection 164(2).



LEVY FOR REGION, COUNTY AND SCHOOL PURPOSES

... The local municipality receives requisitions from both the upper tier (region or county) and school boards indicating the amounts the municipality must raise for their purposes. These amounts are usually adjusted by an allocation of payments in lieu of taxes, grants, telephone and telegraph taxation, and any over- or under-levies from prior years to determine the net amount to be levied.

Regardless of the amounts levied, the amounts required to be paid to the upper tier and to the school boards are the amounts they requisitioned. If there has been a re-assessment, the upper tier requisition will actually be a mill rate. Both are also entitled to their share of any supplementary taxes levied during the year, but must also bear their share of any uncollectible taxes and any adjustments arising from assessment appeals.

ALLOCATIONS TO OTHER BODIES

... Telephone and telegraph taxation receipts, certain grants, and some payments in lieu of taxes received by the municipality are shared with the school boards and/or the region or

county. The amounts to be shared and the method of calculating the sharing ratio vary with the type of payment received. The legislation covering each particular payment sets out the procedure to be followed and should be checked when determining the allocations.

Since there are too many payments of this type to comment on individually, you should speak to

CALCULATION OF MILL RATES - TOWNSHIP OF X

Taxable Assessment

Total Residential and Farm	\$9,000,000
Total Commercial, Industrial and Business	1,000,000

Assessment

Residential and Farm (85% x \$9,000,000)	7,650,000
Commercial, Industrial and Business (100% x \$1,000,000)	1,000,000

Amount to be Raised for General Municipal Purposes

500,000

Mill Rate Calculations

Commercial, Industrial and Business (<u>\$500,000 X 1000</u>)	57.8035
(\$8,650,000)	

Residential and Farm (85% x 57.8035)	49.1329
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Proof

Commercial, Industrial and Business (\$1,000 x 57.8035)	\$ 57,804
Residential and Farm (\$9,000 x 49.1329)	442,196
	<hr/>
	\$ 500,000

your treasurer or contact the local office of the Field Management Branch of the Ministry of Municipal Affairs for the treatment of particular items.

CALCULATION OF MILL RATES

••• The above example shows the calculation of mill rates for the Township of X, which is in a county. The example outlines the calculation for general municipal purposes only, but the same process would be used to calculate the rate for each other purpose.

TAX BILLING

••• Each year the Assessment Division of the Ministry of Revenue provides every municipality with a copy of the assessment roll to calculate taxes for the following year. The roll lists each property separately and shows:

- its roll number,
- its assessed value for taxation purposes,
- the type of assessment (ie. residential, commercial, business, tax exempt, exempt but eligible for grant or payment in lieu, etc.),
- school support (eg. public or separate), and
- totals for each type of assessment by school support.

The roll is known as the "returned roll" and is later amended to show any adjustments from assessment appeals and from errors and omissions. If all changes to the roll are not available when it's time to calculate the mill rates, the returned roll is used and adjustments are made later.

Preparing tax bills is the responsibility of the treasurer or tax collector, who uses information compiled on a collector's roll. The roll lists all real property and other assessments in the municipality, the taxes levied against each parcel

of real property, and any special charges, frontage rates such as local improvement charges, and other special rates.

As required by the Municipal Act, the tax bill separates the elementary and secondary school levies and the upper tier levies from the general local levy and the other special rates. This lets the taxpayer know the amounts to be paid for these separate purposes. The council of a city, town, village, or township may by by-law authorize two separate tax notices, with one notice specifying only the amount of taxes payable for school purposes, but this practice is rare.

Council must also consider:

- whether taxes will be paid in one lump sum or in instalments,
- the dates on which payments will be due,
- penalties for late payments, and
- discounts for advance payments.

Many municipalities have adopted an instalment payment system. Instalments are convenient for taxpayers and provide the municipality with a steady cash flow, reducing the need for temporary borrowing. A further reduction in borrowing is possible if the municipality introduces an interim levy even before adopting its annual budget. Whatever the method of payment, a thorough, systematic system of tax collection is important.

TAX COLLECTION

••• Legislation provides the treasurer or tax collector with several means of enforcing payment of taxes or other charges.

Under sections 371 and 372 of the Municipal Act, for example, a municipality may direct a tenant to forward rent cheques to the municipality and may credit them to taxes and other costs due



from the owner. The municipality may also use a bailiff to seize goods and chattels or may commence a civil action against the owner.

A final option is to dispose of the property under the Municipal Tax Sales Act, 1984, although the sale of a property for tax purposes is generally considered to be a last resort.

Government Contributions

GRANTS AND SUBSIDIES

... Grants and subsidies are contributions made by the provincial and federal governments to assist a municipality to meet the costs of supplying services to its residents.

More than one hundred individual grant and subsidy programs are available from the provincial government through its ministries and agencies. The best source of information on these programs is the publication "Provincial Financial Assistance to Municipalities, Boards and Commissions", prepared annually by the Ministry of Municipal Affairs and available through Publications Ontario.

Conditional and Unconditional Grants

"Conditional" grants are made for a specific program or service. "Unconditional" grants may be used at council's discretion to meet the cost of any budgeted current operating expenditure.

Conditional grants account for approximately 79% of total provincial grants and are subject to eligibility and spending criteria. The major conditional grants are for transportation, health, social services, and the environment.

Unconditional grants, which represent 21% of total provincial grants, are made up of:

- general grant per household,
- policing grant per household,

- levy-based grants (general support, special support, and resource equalization),
- special assistance and transitional grants, and
- revenue guarantee grants.

The levy-based grants, introduced in 1973, include:

- The General Support Grant - currently equal to 6% of the general municipal levy for both upper and lower tier municipalities;
- The Northern Ontario Special Support Grant - currently equal to 23.5% of the general municipal levy and paid to northern municipalities in addition to the General Support Grant to recognize the unique costs they face because of harsh winters and unusual geographic features;
- The Resource Equalization Grant - designed to strengthen the fiscal capacity of municipalities whose tax bases are below the provincial standard, which has been set to approximate the average equalized assessment per household.

PROPERTY TAX CREDITS

... Property tax credits were first introduced in Ontario in 1972 to reduce the burden of municipal and school taxes on low and moderate income earners. Since 1980 the province has provided direct annual grants of up to \$600 per household to offset municipal and school taxes and local improvement charges paid by those 65 years of age and over. Both programs apply whether properties are owned or rented. Property tax relief is also available for owners of managed forests and productive farm land.

PAYMENTS IN LIEU OF TAXES

... Payments in lieu of taxes compensate municipalities for the cost of providing

municipal services to properties exempted from taxation.

While all real property in a municipality is assessed, the Assessment Act exempts certain classes of property from taxation, including but not limited to:

- lands or property belonging to Canada and any province,
- property belonging to a municipality or controlled by a local board or commission,
- property held in trust for a band or body of Indians,
- property occupied by churches or cemeteries,
- property owned by charitable and non-profit institutions,
- public educational institutions and public hospitals.

The payment in lieu of taxes is calculated using a formula specific to the property type and will not necessarily equal the tax that would normally be paid.

Other Revenue Sources

Compared to revenues from taxation and transfer payments, the revenue available to municipalities from other sources is less significant both in its amount and in its impact on the municipal budgeting and financing process. However, it is still important to the operation of the municipality.

Many municipalities have diversified and expanded their revenue bases in recent years in an attempt to reduce their dependence on municipal taxation as the major revenue source.

The selection of other revenues should be carefully examined, however, to ensure that collection costs and potential administrative problems do not outweigh the possible benefits of the additional revenues.

USER CHARGES AND DONATIONS

- The municipality may impose fees and other charges for specific services. Examples are tax certificate fees, sewer and water connection or user charges, recreational facilities charges (eg. refreshment booth and concession charges, arena entrance fees, and ice rental), and various planning and development charges. These fees reflect the cost of providing the services and are paid by the users of the services.

LICENCES AND PERMITS

- Local governments have the right to prescribe, prohibit, and regulate many activities of individuals and organizations, and a municipality may pass by-laws to implement these rights.

Several sections in the Municipal Act authorize a municipality to issue certain licences or permits. The list of occupations or trades that may be licensed and regulated is extensive and is detailed in the sections of the Municipal Act under "Licensing By-laws". Some sections

provide for a specified or maximum fee for licences, while others leave the fee to the municipality's discretion.

Municipalities can also generate revenues from fees for marriage licences, dog tags, and several types of permits, including building and plumbing permits.

Issuing licences and permits is mainly a regulatory or control procedure. The revenue

*Revenue from other sources
is important but should be
considered carefully*



produced is of secondary importance. Even so, the fee should be sufficient to cover the administrative costs of the process.

RENTS, CONCESSIONS AND FRANCHISES

... These revenues include such items as rents charged to use or occupy municipal properties and concessions or franchises to use or operate municipal facilities.

FINES

... This source of revenue includes fines imposed for contravening municipal by-laws, the Building Code Act, and various other acts. The most common fines are those paid for local parking or traffic violations and for violations of building regulations.

PENALTIES AND INTEREST ON TAXES

... Penalties are charged on taxes that are levied in the current year and remain unpaid after their due date. Taxes that remain unpaid after the end of the current year are called arrears, and interest may be added to the amount owing. The rates that may be charged are set by by-law, subject to the limitations of the Municipal Interest and Discount Rates Act, 1982 or the Municipal Act.

INVESTMENT INCOME

... During the year a municipality may have cash on hand that is not immediately needed to meet expenditure requirements and can be invested to earn income. These temporary surpluses can arise because of interim tax collections or grant payments. It is sound financial management to realize a good return on these monies through wise investment practices rather than allowing the funds to remain idle.

The treasurer is responsible for researching and recommending the best investments, subject to

the limits set by statute and by council policy. Investments placed with financially weak organizations may result in the loss or reduction of anticipated interest or, in some cases, the loss of all or part of the principal that was invested.

DEVELOPMENT CHARGES

... Developers are subject to the terms and conditions of subdivision agreements that may require them to install or pay for services like roads, sewers, and streetlights that are needed on the site of a new development. Such an agreement is required before the Minister of Municipal Affairs or a regional municipality will approve a subdivision plan.

The Development Charges Act, 1989 also allows municipalities to pass by-laws imposing development charges. These charges cover the costs of additional infrastructure or capital assets that will be needed to service new developments. The types of infrastructure that can be covered include roads and water and sewer facilities. Examples of capital assets are land and buildings for things like firehalls and recreational facilities, equipment such as buses and police cars, and even library books.

Before passing a by-law, council must do a detailed study of all of the costs that are likely to be incurred because of development. Most use a consultant to help prepare the study. While both upper and lower tier municipalities can pass a development charges by-law, it is the lower tier that must collect the charge.

The by-law remains in force for up to 5 years, although council can pass a new by-law earlier if circumstances change. For up to 20 days after council's approval of a development charges by-law, any interested person can appeal the by-law to the OMB.

Development charges protect existing municipal taxpayers from having to pay for servicing a new development. The developer recovers the costs through the housing sale price.

Need for Financial Management

THE BUDGET PROCESS

• Budgets should be powerful management tools as well as legal documents required for administrative purposes. Simply stated, budgeting is as a process by which limited resources are allocated to competing social demands. The three essential elements of budgeting are planning, co-ordination, and control.

Planning Any level of government must have a plan if it is to achieve a proper balance between the level of service expected by its ratepayers and a reasonable level of taxation. Without a plan it is far too easy to drift away from the real priorities as a result of internal and external pressure. Planning should begin with the development of broad statements of the municipality's needs and what it hopes to accomplish for several years ahead. When aware of overall municipal goals, department heads can prepare their short- and long-plans, programs, and expenditure requirements in conformity with, and in the direction specified by, those goals.

Planning demands that municipal services be identified and be given relative priorities. When submitting its budget, each department should include an evaluation of its expenditure requirements showing:

- the specific services on which expenditures will be made and the amounts for each,
- the reasons for making the expenditures, and

- how the service conforms to the municipality's stated goals.

Council must then decide how to allocate its resources to provide adequate services to its ratepayers.

Be Objective...

You should be objective in setting policy and establishing goals and priorities, but for several reasons that's often easier said than done.

1. Political Environment

- Individual councillors and department heads may have projects they wish to promote.
- Citizen groups may lobby strongly for expenditures on the environment, recreational facilities, or road improvements.

2. Social Concerns

- There may be a need for facilities such as parks, playgrounds, community centres, or libraries.
- There may be a need for increased health and welfare services.
- Stricter building and safety standards may require more inspection staff.

3. Economic and Financial Situation

- Inflation and higher interest rates may mean increased costs just to maintain existing levels of service.
- Limited revenue sources may restrict the availability of funds.

Council will have to consider all of these factors before making the final budgetary decisions.

Be Ruthless...

It is impossible to accommodate everyone's wishes. Some ruthlessness is necessary to



prepare a sound and effective budget.

- Review existing services and operations to determine whether they can be streamlined or improved.
- Weed out unnecessary programs and expenditures. Once established, programs often continue long after their need has disappeared.
- Compare departments' budget requests to the municipality's priorities. Each department will naturally feel that its programs are essential, but trade-offs can usually be made.
- Carefully weigh requests from community groups asking for special consideration. Sometimes there may be benefits to the general community in granting certain requests, even if those benefits cannot easily be measured.

Co-ordination A municipality should have a budget committee to co-ordinate the budgeting process. The committee, consisting of all or part of council and senior staff, will:

- produce and circulate an approved statement of municipal priorities and goals to department heads,
- provide technical budgeting assistance to departments,
- evaluate individual budgets submitted to the committee,
- ensure that each department's budget is compatible with the budgets of the other departments and with the municipality's goals.

Once all of the budgets have been submitted, the budget committee will consolidate them into an

overall budget document for council's consideration. If council feels that the budget does not correctly reflect its wishes, it will return the budget to the committee for revision. The committee will in turn return the departmental budgets to each department for the changes requested by council. Revised budgets will be returned to the committee and then again to council. This process will continue until council receives a budget that conforms to its wishes.

Control Once a budget has been approved by council, activities must be controlled to ensure that they comply with the budget. Periodic reports to management and council will show whether departments' actual expenditures and revenues are conforming to their budgets. Any potential over-expenditures can be identified before serious difficulties arise. When an over- or under-expenditure is identified, the department responsible should have to explain the differences between its actual and budgeted figures.

While we emphasize the need for control, you should not infer that, once adopted, budgets cannot be changed. A budget reflects a plan of action based on assumed circumstances, and if circumstances change, budgets should be changed accordingly. The reasons for any changes should be documented, however, and each change should be recommended by the budget committee and approved by council.

Advantages of Budgeting In summary, effective use of the budgeting process provides several advantages:

- Management and council are forced to examine the services provided to the citizens, their available resources, problem areas, and other ways of providing the services.

*Budgets are powerful
management tools*

- The budget process uses the knowledge of the whole municipal organization. Problem areas are examined by the entire management group. Conflicting objectives are analyzed and given priorities collectively so that everyone is committed to the final product.
- Resources are allocated to achieve the best possible service to the ratepayers.
- There are periodic re-evaluations of the need for a service and of the level that should be offered.

THE CURRENT BUDGET

- After priorities have been established and spending limits assigned, detailed estimates should be prepared for each function and activity listing wages, benefits, materials and supplies, financing costs, and so on. A list of estimated revenues by source should also be prepared. Any surplus or deficit from prior years must also be taken into account.

The detailed breakdown of accounts in the estimates should conform as closely as possible to the municipality's chart of accounts. This approach has several advantages:

- specific expenditures are approved by specific accounts;
- responsibility is easily determined;
- budgetary control is more effective;
- there is no misunderstanding about where funds were allocated;
- in-year and year-end reports can be prepared with a minimum of effort and analysis;
- budget calendarizations and cash flow estimates are easier to prepare.

The mill rates should be calculated and compared with those of the previous year to show council the effect of the estimates on the ratepayers.

THE CAPITAL BUDGET

- The same general comments apply to capital budgets. A capital expenditure is any significant expenditure to acquire or improve land, buildings, structures, and machinery and equipment, including vehicles and office furniture and equipment. The expenditure would normally have a benefit lasting more than one year and result in the acquisition, or extend the life, of a fixed asset.

A capital program normally covers a five-year period, enabling municipal officials to make major spending decisions well in advance of their actual requirements. Projects scheduled to begin in the first year of the program are part of the municipality's capital budget for that year. The projects can be financed using one or a combination of:

- current revenues,
- government grants and subsidies,
- reserves or reserve funds,
- public donations,
- debenture issues,
- long-term bank loans,
- a capital levy.

The method you use will depend on the type of project, the estimated costs, the estimated start and completion dates, existing commitments, and the municipality's financial capability.

Because of their size, capital expenditures will normally result in a dramatic increase in the mill rate if they are financed in one year. It may be fairer to spread the cost of a long-term asset over several years so that those who will subsequently benefit will also share the cost. This is usually done by issuing debentures or other forms of long-term borrowing. Such financing is subject to the approval of the



The Municipal Auditor and the Audit Function

Ontario Municipal Board, which authorizes long-term borrowing (any debt extending beyond the term of the present council). Even when council intends to meet the cost of a capital project within the term of council it is advisable to obtain OMB approval just in case.

Depending on the prevailing interest rate and the municipality's credit rating, debentures can result in heavy carrying costs that add greatly to the price of a capital item. This has led a number of municipalities to shift to a "pay-as-you-go" policy in which all or certain specified capital expenditures are paid from current revenue.

The type of financing a municipality chooses will depend on local circumstances. Council should examine a range of financing options when any capital expenditure is being considered.

BUDGETS OF LOCAL BOARDS

... Unless so designated by statute, local boards are not autonomous bodies but are under the control of council. Local boards must submit their budgets to council for approval, and all financial transactions should be routed through the municipal treasurer. Revenues must be deposited in an account in the name of, and controlled by, the municipality. Council must authorize all payments, and the treasurer must sign and issue the cheques.

The budgets of local boards under the jurisdiction of council must therefore be prepared in sufficient detail for proper review. The treasurer should prescribe the format the local boards must use to ensure consistency in the preparation of the estimates. The total budget for the municipality should include the estimated revenues and expenditures of all local boards shown under the appropriate function.

Section 88 of the Municipal Act states that a municipality shall by by-law appoint for a term of up to five years an auditor or auditors licensed under the Public Accountancy Act. Council must review the appointment at the end of the term and may re-appoint the incumbent or change auditors. Once appointed, the auditor automatically becomes the auditor of the municipality's local boards and the auditor of any joint board for which the municipality pays a larger portion of the operating costs than any other municipality (except school boards).

The main purpose of an audit is to report on the fairness of the municipality's financial statements, not to find fraud or other irregularities. In conducting an audit, however, the auditor must comply with generally accepted auditing standards and will usually include an evaluation of the municipality's internal control system. A strong system of internal control is the best defence against fraud.

AUDITOR'S SERVICES

... As well as auditing, the auditor will often provide other services such as bookkeeping, accounting, preparing annual financial statements, and advising on computer systems. Since the costs for each of these services can vary significantly, it is important to determine clearly which functions and specific tasks the auditor is to perform.

To avoid any misunderstanding about the types and costs of services the municipality expects from the auditor, you should have an "engagement letter". The letter should specify each service and its cost and should be reviewed annually.

AUDITOR'S REPORT

••• The auditor's report should include the scope of the auditor's examination and either an opinion on the financial statements or an assertion, with reasons, that an opinion cannot be expressed.

When an opinion is expressed, it should indicate whether the financial statements fairly present the municipality's financial position and results of operations in accordance with generally accepted accounting principles for Ontario municipalities. The report should give a full explanation of any reservation in the opinion. It should also indicate whether the basis of accounting is consistent with that of the preceding period. If the basis or its application is not consistent, the report should explain the nature and effect of the inconsistency.

THE AUDIT COMMITTEE

••• An audit committee, usually made up of members of council, the treasurer, and the chief administrative officer (if there is one) should meet with the auditor to:

- review the consolidated financial report and any reporting issues before submitting it to council,
- discuss any matters that the auditors wish to bring to the committee's attention,
- review the steps management has taken to eliminate any serious weaknesses in internal control systems and procedures,
- review the scope and findings of the audit,
- make general enquiries of both staff and the auditors to get more information about financial issues in the municipality.

SUBMITTING REPORTS

••• The auditor must report to the council, inhabitants, and ratepayers on the financial statements of the municipality. If there are any control weaknesses in the municipality, the auditor should:

- report routine matters to the treasurer,
- report more important matters to council in the form of a management letter (the auditor also has a responsibility to ensure that reports to council are in fact presented to council),
- report to the inhabitants and ratepayers if fraud, control weaknesses, irregularities, or abuses of office have affected the auditor's opinion on the fairness of the financial statements.

The municipality should send to the Ministry of Municipal Affairs a copy of all reports to council.

FINANCIAL REPORTING TO THE PUBLIC

••• Section 85(1) of the Municipal Act requires each municipality to publish in a newspaper with a general circulation in the municipality, or to mail or deliver to each ratepayer, a copy of the audited financial statements and the auditor's report for the preceding year. Council has the discretion, subject to certain minimum disclosure requirements, to determine the format and content of the financial report made to the residents.

ANNUAL FINANCIAL REPORTS

••• At the end of each year every municipality must prepare a financial information return and a financial report.

Financial Information Return (FIR) The FIR provides financial information that is used to determine the municipality's unconditional



grant entitlement and to develop provincial policy on local government finance.

Each municipality must file its FIR with the province by April 30 of the year following the year it covers. The forms are prescribed and provided by the Ministry of Municipal Affairs, which also provides detailed instructions for their completion and any other advice and assistance that may be needed.

Financial Report (FR) The FR is the municipality's annual audited financial report. It too must be filed with the province by April 30 of the year following the year it covers.

For more information on the accounting and disclosure requirements for municipal financial statements, talk to your treasurer or refer to the Ministry of Municipal Affairs' publication, the "Municipal Financial Reporting Handbook".

References - Section 3

Canadian Comprehensive Auditing Foundation. *The Role of Auditing in Canadian Municipal Administration*. Ottawa, 1983.

Ministry of Municipal Affairs Publications:

The Municipal Audit, Volume I, Responsibility/Communication. Toronto, November 1986.

The Municipal Audit, Volume II, Other Responsibilities. Toronto, June 1988.

Financial Disclosure to the Public - A Code for Municipalities In Ontario. Toronto, July 1984.

Basic Accounting Package (BACPAC), Vols. 1 and 2. Toronto, 1982.

Understanding Your Financial Statements. Toronto, June 1987

Municipal Financial Reporting Handbook. Toronto, November 1990.

A Guide to the Development Charges Act. Toronto, March 1990

Provincial Financial Assistance to Municipalities, Boards and Commissions. Toronto, annual

Local Government Finance in Ontario. Toronto, annual.

Richmond, Dale. *Guidelines for the Management of Debt*. Municipality of Metropolitan Toronto, Chief Administrative Officer's Department, June 1978.

Tindal, C.R. *You and Your Local Government*. Toronto: Ontario Municipal Management Institute, 1982.

Tindal, C.R. and S. Nobes Tindal. *Local Government in Canada*. Toronto: McGraw-Hill Ryerson, 1984, Chapter Ten.

A lot of information may also be available in your municipality in the form of budget manuals and handbooks, financial procedure by-laws, and various other documents. The treasurer should be able to give you some advice and suggestions.

Natasja

Section 4

... LAND USE PLANNING



Introduction

Community or land use planning can be defined as managing our land and resources. Through careful land use planning a community can manage its growth and development while satisfying important social, economic, and environmental concerns. More specifically, the land use planning process balances the interests of individual property owners and the wider needs and objectives of the community. All of these aspects of land use planning have a significant effect on our quality of life.

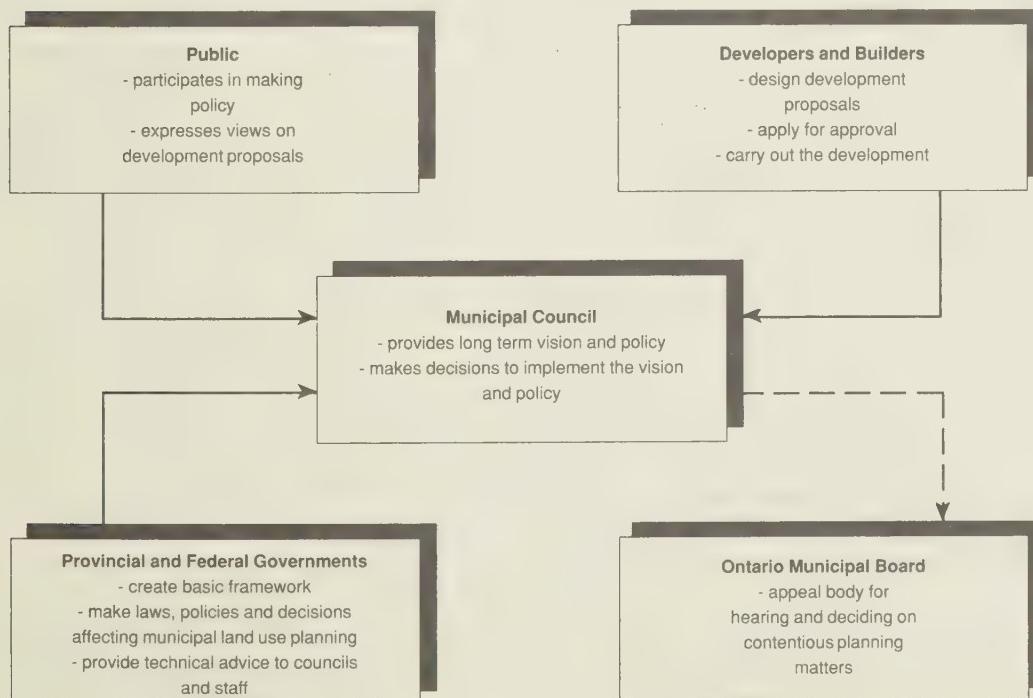
Council plays a key role in land use planning. As an elected representative of the community, you are responsible for making decisions on existing and future land use matters and on issues related to local planning documents.

Land use planning affects almost all other municipal activities, and council should think about those effects when making planning decisions. Land use planning also has a significant impact on the community. Public participation should therefore be recognized as a very important part of the process and should be encouraged. Councillors, especially in growing municipalities, devote a large part of their time to community planning issues and find that much of their interaction with the public involves planning matters.

The Planning Framework

The Planning Act provides the legislative framework for land use planning in Ontario. It is the basis for local planning administration, the preparation of planning policies,

THE PLANNING FRAMEWORK



development control, land division, provincial interests relative to municipal land use planning, and the public's right to participate in the planning process. Although the Planning Act is the primary legislation governing municipal land use planning in Ontario, other acts, such as the Environmental Protection Act and the Heritage Act, must also be considered.

The Ontario Municipal Board hears appeals and makes decisions on controversial land use proposals. The OMB's decision on all matters referred to it under the Planning Act is final, except on those declared to be of provincial interest by the Minister of Municipal Affairs. The provincial Cabinet has the final decision on those matters.

Municipal Planning Tools

Municipalities use several tools, such as official plans, zoning by-laws, and subdivision agreements, to plan and control development. Reviewing your own municipality's planning documents and discussing them with staff will give you a better understanding of their use and application.

THE OFFICIAL PLAN

The official plan should be a forward-looking and strategic policy document that sets out council's views and intentions on land use in the community. The official plan identifies the physical aspects of anticipated development and co-ordinates current and future growth to best suit the municipality. It describes where certain land uses will be permitted within the

municipality, what environmental features are to be protected, what services, such as roads and water and sewer systems, will be required, and when the growth will take place. Official plans should allow some flexibility in making and interpreting land use decisions.

When preparing an official plan the municipality must inform the public. Council must hold at least one public meeting before the plan is

adopted to give citizens an opportunity to voice their concerns and opinions. When the plan has been adopted, the Planning Act requires that notice must be given to any person who asked for it.

A copy of the plan is sent for final approval to the Minister of Municipal Affairs or to a regional municipality that has been delegated approval power. The minister, or delegate, has the authority to approve, refuse, or modify the plan

in whole or in part and to refer all or part of the plan to the OMB if there are any concerns that cannot be resolved. The OMB holds a public hearing to address such disputes and to reach a final decision. The plan becomes "official" once it has been approved.

Land use planning matters in unorganized areas of northern Ontario are usually the responsibility of a planning board, which has the same authority for such matters as a municipal council.

A local official plan provides direction and guidance for planning the community. Once approved, it means that:

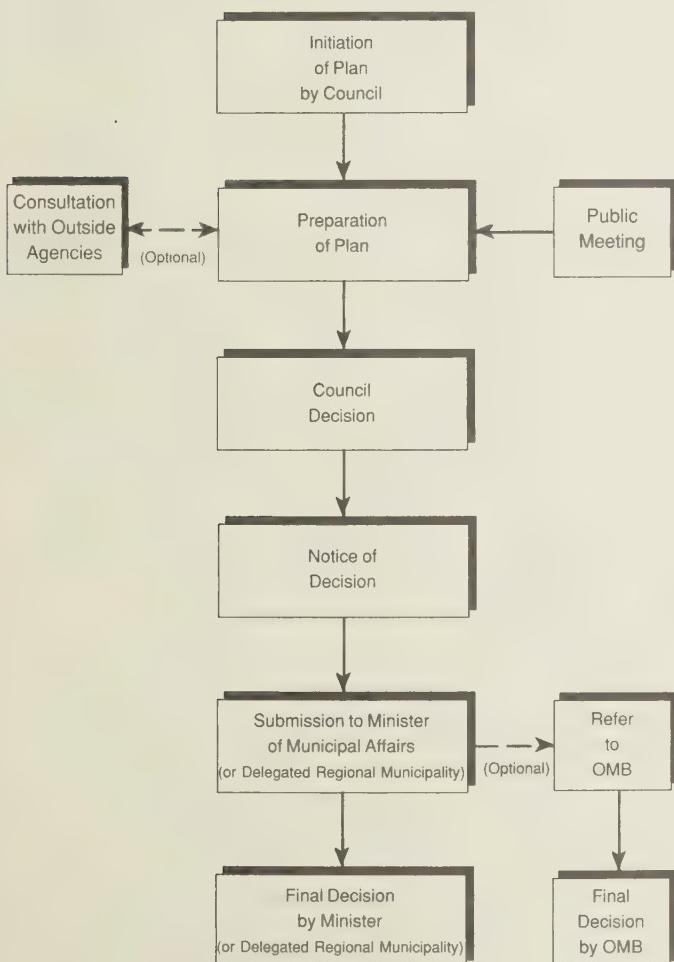
- council and municipal staff must follow the plan;



- all public works (eg. new sewers) must conform to the plan;
- all by-laws must conform to the plan.

Council can amend an official plan at any time. Changes may be needed, for example, to allow desirable development that the current plan does not permit. Official plan amendments are prepared and approved in the same manner as the plan itself, including the opportunity to appeal to the OMB.

OFFICIAL PLAN PROCESS



While an official plan guides your municipality's future planning decisions, the plan itself does not directly control the use of land by private property owners. That specific control is provided by a zoning by-law.

THE ZONING BY-LAW

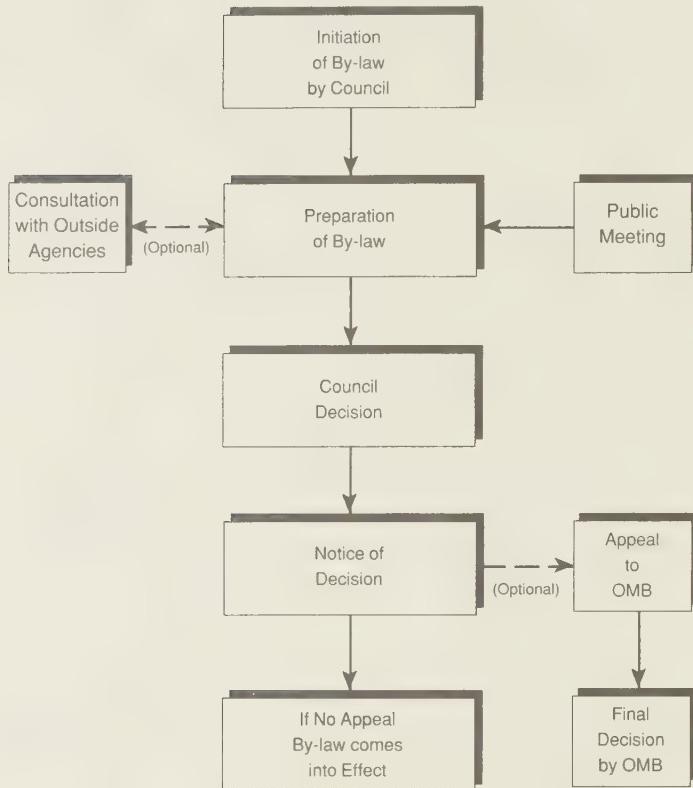
... A zoning by-law implements the objectives and policies of the plan by regulating and controlling specific land uses. Because it is legally enforceable, a zoning by-law is a very effective tool for managing land use and controlling development.

The by-law stipulates the types of uses (eg. residential or commercial) that will be permitted, lot sizes and dimensions, parking requirements, building heights, and setback standards for locating buildings and structures on a property.

As with an official plan, municipalities must consult the public during the development of a zoning by-law. At least one public meeting must be held to allow citizens input before the by-law is passed. Prior notice of the meeting and information about the proposed by-law must also be provided. Once all concerns have been fully considered, council has the authority to enact, change, or reject the by-law. If changes are required, council must decide whether another public meeting is necessary before finally passing the by-law.

Individuals also have the right to appeal to the OMB within a specified time period if their concerns cannot be resolved. The OMB will hold a public hearing to address those concerns and may allow or dismiss appeals, or repeal or amend the by-law.

ZONING BY-LAW PROCESS



Zoning by-law amendments, or rezonings, are often necessary when the proposed use or development of a property does not comply with the existing zoning by-law. A zoning change can be granted only if it conforms to the official plan. A rezoning follows the same process as the zoning by-law itself, including an appeal to the OMB.

MINOR VARIANCES

- If a development proposal does not conform exactly to the zoning by-law, but is in keeping with the general intent of both the by-law and the official plan, an application can be made for a minor variance. Because of the shape of a lot, for example, a property owner may be proposing work that does not conform with minimum side

yard setbacks. Granting a minor variance eliminates the need for a formal rezoning application and, unlike a zoning amendment, does not change the existing by-law.

Minor variances are obtained by applying to the local committee of adjustment, which is appointed by council to resolve minor problems in meeting municipal by-law standards. The application is followed by a public hearing. Appeals to the OMB must be submitted to the secretary-treasurer of the committee within 30 days of the committee's decision.

PLANS OF SUBDIVISION

- Subdivision control ensures that development takes place in accordance with the municipality's official plan and zoning by-law.

Before land can be subdivided into separate parcels for development, a plan of subdivision must be approved by either the Minister of Municipal Affairs or a municipality that has been delegated the authority. The process begins when the property owner or an agent submits a draft plan of subdivision to the minister or delegate, who then circulates the draft to the municipality and other affected ministries and agencies for comments. The Planning Act does not require public notice, but once they receive the draft plan municipalities usually do notify local residents or require that a sign be posted on the site.

Each application is reviewed in light of both existing policies and regulations, as well as the comments received from the municipality and others. Council may request, for instance, that certain conditions be imposed to ensure that the plan meets the municipality's requirements.

Park land or an equivalent cash donation may be required, and development charges may be imposed to pay for a fair share of any additional



services needed for the development. A subdivision agreement between the municipality and the developer will guarantee that services within the subdivision, such as roads and sidewalks, will be constructed to the municipality's standards. The agreement can be registered against the land. Final approval should be withheld until all of the conditions have been met.

Once final approval has been given, the plan must be surveyed by a professional land surveyor and registered in the local land registry office. The registered plan of subdivision is a legal document that sets out the precise boundaries of the property, the dimensions of blocks and building lots, including facilities such

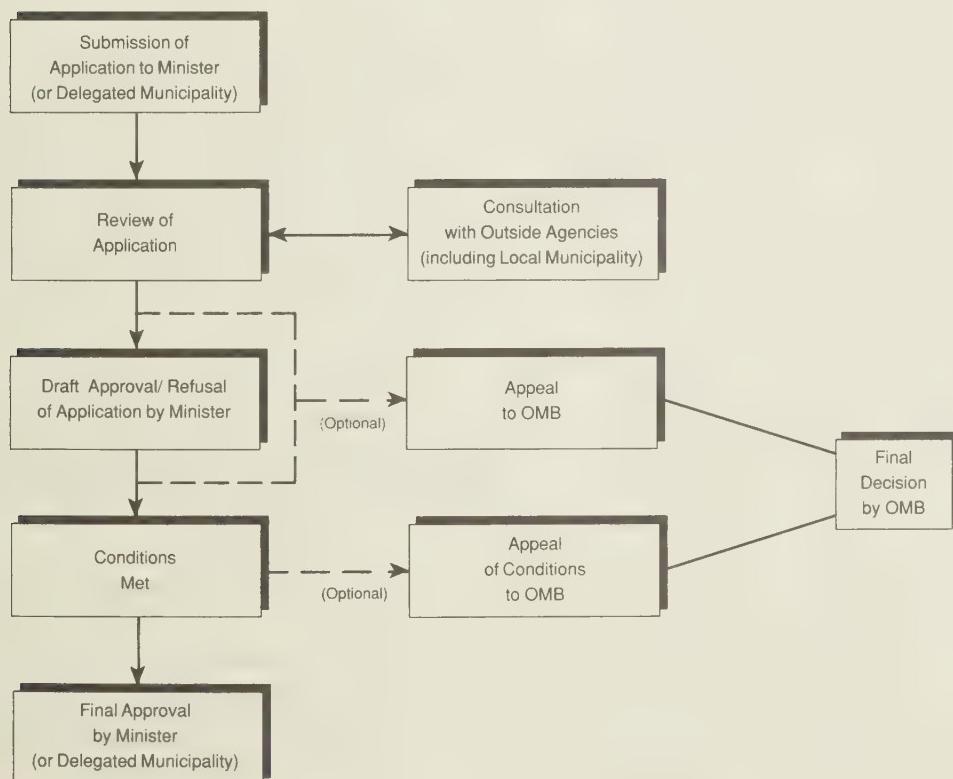
as parks and schools, and the widths and names of all streets within the property.

Appeals of plans of subdivision may be made in three instances:

- before a decision is made to give draft approval to a subdivision application,
- if the application is refused, and
- if the conditions are unsatisfactory to the municipality or the applicant.

If an appeal is made, the application is referred to the OMB for a final decision.

SUBDIVISION PROCESS



LAND SEVERANCE

... A property owner who wants to create only one or two new parcels of land may apply for a land severance, also called a "consent" because the consent of a severance-granting authority is necessary. This may be council, a committee of adjustment, a land division committee, a planning board, or the Minister of Municipal Affairs. Ask your clerk which body is responsible for these matters in your municipality. As with subdivision

proposals, review and approval of land severances prevents the negative impacts of uncontrolled development.

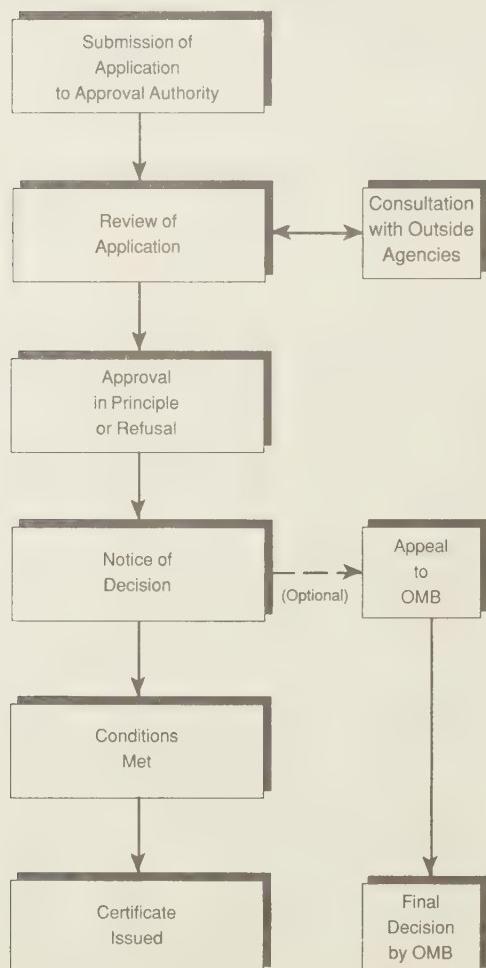
The public is an important part of community planning

When evaluating a severance application, the approval body asks certain municipal and provincial officials to review and comment on it. Once the approval body has made a

decision it must send notice to the applicant and any interested parties.

A decision on a land severance may be appealed to the OMB but only by the applicant or an individual who requested, in writing, a notice of the decision. Appeals must be sent to the municipal clerk or the secretary-treasurer of the land division committee or committee of adjustment within 30 days of the decision.

LAND SEVERANCE PROCESS



SITE PLAN CONTROL

... Another valuable feature of the Planning Act is site plan control, which gives municipalities detailed control on the development of a particular site. Council may require a site plan agreement with the developer setting out details such as parking areas, road widenings, elevations and grades, landscaping, building plans, and services. The agreements can be registered on title and must be complied with by the owner and all subsequent owners.

The Role of the Public

The public is an important part of the community planning process. Planning decisions are really value judgements made by elected representatives, and those decisions directly affect the community in which we live. The public therefore has a genuine interest in the decisions and their effect on the community. The



planning process is designed to give individuals the opportunity to provide input before decisions are made and to appeal decisions.

If the general public is not involved in or informed about a particular planning issue, decisions will likely be influenced by special interests. Civic-spirited individuals are essential to ensuring that planning decisions reflect broad public concerns and the best interests of the entire community.

Good planning balances the community's environmental, social and economic concerns

- the effects of both the initial and the long-term costs on the mill rate and the existing ratepayers.

Considering the impacts of development is essential to responsible community planning, but a reasonable approach ensures that the community can attract the development it needs. The

policy your municipality adopts should reflect a balance between maintaining financial stability and meeting the community's social needs while respecting the environment.

A Balanced View

Before approving any planning application, a municipality should look closely at all of the related environmental, social, and financial costs and benefits for the community.

Environmental considerations include the effects of development on land, air, and water. In addition to applying its own knowledge about the environmental features and impacts of planning proposals, the municipality should seek advice from responsible provincial agencies and the local conservation authority.

Social concerns include the local need for housing and job opportunities, as well as the possible demand for additional services such as schools, parks, day care, nursing homes, group homes, and other social support facilities.

From a financial point of view, the benefits of additional tax revenues must be weighed against:

- the initial capital costs of the hard and soft services that will be required,
- the ongoing costs of maintaining those services,

Land Use Planning in Northern Ontario

WHAT ARE THE DIFFERENCES?

... Several agencies are responsible for land use planning in most northern municipalities, including planning boards, the Minister of Municipal Affairs, and the Ministry of Natural Resources. Some of the steps involved in land use planning in northern Ontario also vary from those followed in the rest of the province.

- The Minister of Municipal Affairs can establish a planning area including one or more municipalities and unorganized territory or unorganized territory only.
- Proposals for official plans and official plan amendments in unorganized areas are handled by an area planning board, whose members are appointed by the minister. The board can also prepare and recommend a plan for a municipality in the planning area and provide advice to a local council or to the minister on local planning issues.
- In unorganized areas the minister is responsible for zoning through a minister's zoning order, which is much like a zoning by-

law. It defines where specific land uses will be permitted and sets standards like lot sizes and parking requirements. The minister gives public notice within 30 days of imposing a zoning order and makes a copy of the order available at the appropriate land registry office.

- Amendments to a zoning order are considered by the minister and are evaluated against the area's official plan, with provision for referral to the OMB. In considering an application for an amendment, the minister or planning board must consult the public. Some planning boards have taken on the responsibility of reviewing applications for amendments and making recommendations to the minister.
- The minister approves land severances unless approval has been delegated to council or a planning board.

MINISTRY OF NATURAL RESOURCES

- The Ministry of Natural Resources is involved in all activities related to the use of public land, water, fish, forestry, wildlife, and minerals in northern Ontario. Prior to developing Crown Land, the Ministry of Natural Resources must consult affected councils and planning boards and must take any existing official plans and policies into account.

Conclusion

Land use planning decisions are made by informed councillors who consider both technical advice from professional planning staff and the views of the community. Your involvement in community planning will require you to make decisions on issues of public concern that may often be controversial. Despite

this, your participation in a process that will determine the future of your community may well be one of the most enduring and gratifying contributions you make as a councillor.

References - Section 4

MacFarlane, Craig and Macauley, Robert. *Land Use Planning*. Butterworths

Ministry of Municipal Affairs. *A Citizen's Guide to Land Use Planning*. (pamphlet series). Updated 1990.

Ministry of Municipal Affairs. *An Introduction to Community Planning*. August, 1985.

Rogers, Ian MacF. *Canadian Law of Planning and Zoning*. Toronto: Carswell

Tindal, C. Richard. *You and Your Local Government*. Ontario Municipal Management Institute, 1988.

Your municipality may also have various planning documents that will provide useful information, including:

- an official plan
- a zoning by-law
- a subdivision agreement.

Municipal staff can also be valuable source of advice and information.

•
Your decisions guide the future of
your community
•



... THE CONSTITUTIONAL SETTING

Introduction

There are 832 municipalities in Ontario, including metropolitan, district, and regional municipalities, counties, cities, towns, separated towns, townships, villages, and improvement districts. In addition, there are more than 2,000 other local governing bodies, usually referred to as boards and commissions.

Areas of the province without municipal government are called unorganized territories. The Ministry of Northern Development and Mines assists the inhabitants of those areas to set up local services boards to deliver basic community services.

The Municipal Directory, published annually by the Ministry of Municipal Affairs, provides a good definition of the types of municipalities and can be a valuable reference tool for all councillors and municipal staff.

Your day-to-day activities will often involve working with local boards and commissions, other municipalities and levels of government, and various municipal associations. All of these bodies play a part in the smooth functioning of local government. Their roles and links with municipalities, a general description of upper and lower tier municipal structures, the municipal services for which each level is responsible, and the different methods of election to an upper tier municipality are all described in the following pages.

Municipal Government

UPPER AND LOWER TIER MUNICIPALITIES

- Ontario's municipalities can be classified as either a single or a two-tier system of local government. Most communities in the north are

single tier municipalities while those in southern Ontario are part of a two-tier system.

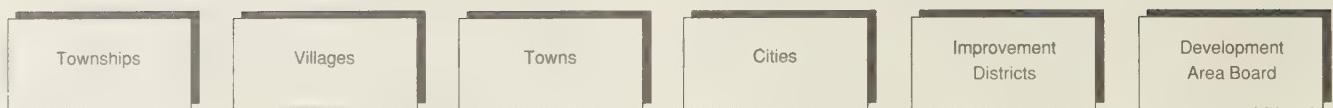
Two-tier structures consist of an upper tier county (generally in rural areas) or regional municipality (generally in urban areas), and several lower tier municipalities such as cities, towns, townships, and villages. The county is the older and more common form of upper tier municipality. The regional structure was introduced as a result of local government reform initiatives in the late 1960s and early 1970s.

The upper tier county or region co-ordinates and delivers certain services for the area municipalities within its boundaries, except cities and separated towns that are not part of a county for municipal purposes. The result is a more efficient allocation of resources and more cost-effective delivery of services used by all or most of the area municipalities.

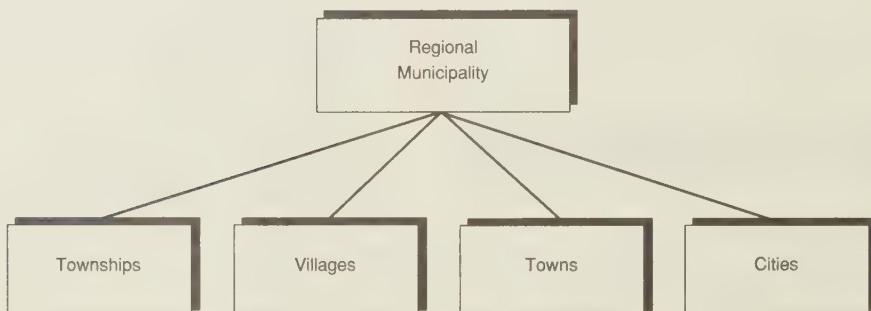
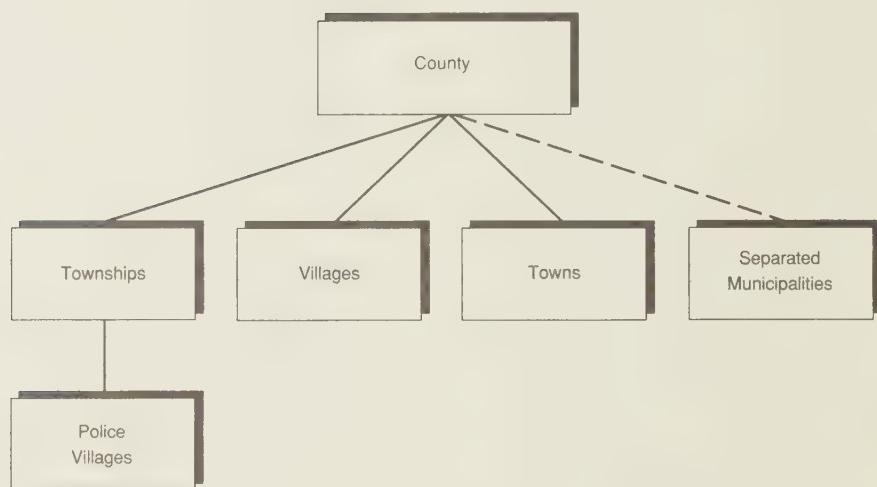
There are thirteen restructured upper tier governments that are really a modified form of the county structure. Ten are regional governments (Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Niagara, Ottawa-Carleton, Peel, Sudbury, Waterloo, and York); one is the restructured County of Oxford; one is the District Municipality of Muskoka; and, finally, the Municipality of Metropolitan Toronto. Although county and regional governments share similar characteristics and features, the latter are considered to be the stronger municipal structure. Regional municipalities have significantly greater responsibility for certain municipal functions, and the inclusion of cities in the lower tier strengthens the regional unit even further.

MUNICIPAL STRUCTURES

Single Tier System



Two Tier System





MUNICIPAL FUNCTIONS

... As a citizen and a taxpayer you probably had some idea of the services your municipality provides. As a councillor, however, you should be fully aware of your municipality's functions. If your municipality is part of a two-tier structure, you also need to be aware of the different responsibilities at the two levels.

A local municipality's functions usually include:

- administrative and council services,
- building services,
- engineering and public works,
- land use planning,
- library services,
- parks and recreation,
- police and fire protection,
- public transit,
- tax collection and financial management.

The availability and extent of these services will depend on the size of the community.

In a two-tier system of local government, some services are delivered by the upper tier municipality. While lower tier municipalities manage their local servicing needs, regional or county governments handle services that need to be co-ordinated over a wider area, especially where service demands cross municipal boundaries, or that can be more economically administered on a larger scale.

This allows municipalities with common interests to plan together for the delivery of such services as:

- community health,
- engineering and public works,
- financial management,
- housing,

- land use planning,
- police protection,
- public transit,
- social services,
- waste management.

Responsibility for some of these services can be shared by both levels of local government, with garbage collection and disposal being a good example. While area municipalities are responsible for collecting their own garbage, it is frequently the upper tier that is responsible for its disposal and for the broader issue of waste management. Depending on local needs, services such as public transit may be the responsibility of either the lower or the upper tier.

ELECTION TO AN UPPER TIER MUNICIPAL COUNCIL

... Just as functions and responsibilities differ between lower and upper tier municipal governments, so do the methods of election. Membership on local council is the result of a direct election, either by ward or at large. If your municipality is in a county or region, some of your municipality's locally elected officials will also serve on the upper tier council.

Election to county council is termed indirect because members become county councillors by virtue of their election to the lower tier council. County council is made up of the reeves and deputy reeves of the villages, towns, and townships within its boundaries in approximate proportion to their population. The head of council, the warden, is elected annually by and from among the members of county council.

The elected representatives of separated municipalities within a county are not part of the county government. Co-ordination between the county and those municipalities is done through

agreements on matters such as joint planning and servicing areas.

A regional council automatically includes the heads of council of the area municipalities. The other councillors are elected in one of three ways:

- directly to regional council only,
- to both regional and local council, or
- indirectly by the members of the local councils.

The head of regional council, the chair or chairperson, is in most cases selected from among the members of the regional council or from one of the local municipal councils and serves for a three-year term. If the person chosen holds a seat on a local council, he or she must resign that seat in most regions. Some regional chairs are directly elected.

LOCAL SPECIAL PURPOSE BODIES

... There are many special purpose bodies, usually called boards and commissions. Probably the best-known example is the school board. Other familiar bodies at the local level include public utilities commissions (PUCs), health units, community centre boards, conservation authorities, police commissions, library boards, children's aid societies, and land division committees.

The area over which most boards had jurisdiction was in the past confined to one municipality, or even a smaller area within a municipality. Today, however, we have boards that may have jurisdiction over several municipalities or even counties. A conservation authority is a good example of an intermunicipal board. Since it has jurisdiction over one or more complete watersheds, it usually covers several municipalities and may extend over parts of two

or more counties or regions.

In southern Ontario, health units and boards of education may provide services in all municipalities within a county or region, or in some instances, even two counties.

Characteristics of Local Boards Local boards have the following similar characteristics:

- they are public bodies whose membership is either directly elected (like school boards and many PUCs) or appointed, often jointly, by municipal council(s), the province, or other special purpose bodies;
- they operate at the local or upper tier level, but outside the municipal structure;
- they have a single function or a limited number of functions (hence the name "special purpose");
- their revenue sources may be the municipal government(s), the provincial government, and possibly user charges.

Most boards are statutory, that is, they are established under the authority of a provincial statute that defines their structure and responsibilities. While alike in several ways, boards and commissions do have different statutory bases, responsibilities, and degrees of independence from council.

Mandatory Boards Several statutory boards are mandatory. The statutes require that such boards must exist or that they must be set up under certain circumstances (eg. a police commission if a municipality's population exceeds a certain amount). These statutory, mandatory boards are often beyond council's control.

The most notable example is the school board. It has existed as a separate authority since the early 1800s, before even the provision for municipalities. A school board is completely



independent of council and has its own elected governing body. Municipalities act as tax-collecting agents for school boards but have no control over the amounts collected or how they are spent.

Optional Boards At its own discretion council may set up various boards, such as a library board. Once established, however, some optional boards must comply with the statutes. The best example of this is a museum board.

Council-Board Relations The most important feature of boards as they relate to council is the extent of their independence, but it is almost impossible to generalize about these relationships.

Problems in the relationship between council and a board should not arise if the board is purely advisory or exists entirely at the discretion of council. If problems do arise, council can simply resolve them to its satisfaction, even abolish the board if necessary.

There are, however, several boards that exercise important responsibilities, claim substantial portions of local revenues, have jurisdiction over large geographic areas, and operate quite independently of council. Boards of education, health units, and conservation authorities are examples.

Given the extent to which boards are used in Ontario, councillors must develop a close and effective working relationship with them. In some instances, this may mean firmly exercising council's authority.

- If council has the right to approve and/or receive financial information from a board for

which it is required to provide funds, council should insist on early and complete financial information. (This does not apply to boards of education, for which municipalities collect taxes.)

- If council appoints the members of a board, it has an opportunity to ensure contact with and direction to the board. Council should therefore select people who can fulfil this role effectively.

Even if council does not control the finances or the members of a board, there is still much to be gained from regular, joint meetings. Such meetings will help to develop close co-operation among the various local agencies in the municipality, improving communications and mutual understanding.

Under sections 208(5), 208(57), and 217 of the Municipal Act, a municipality may appoint a board of management responsible for maintaining and beautifying improvement areas, for special undertakings, and for the joint management of works and services for one or more municipalities. When a board of management is established, responsibility for the board's financial and other operations rests with the municipality or municipalities involved. The board cannot be financially independent from the municipality and must use municipal accounts and reserves.

Given the number and variety of special purpose bodies, you should become familiar with the relationship and responsibilities of all of the local boards operating within or affecting your municipality.

Develop a close working relationship with local boards

MUNICIPAL BOUNDARY CHANGES

• Most municipal boundaries were set long ago, in some cases not even for governmental purposes, and often bear little relationship to today's population patterns and interactions.

As urban areas grow they tend to attract fringe development in surrounding rural areas, often outside the municipality's jurisdictional boundaries. The residents of these fringe areas may have access to and benefit from the services provided by the urban centre, often at little or no cost. Areas of fringe development are prime areas for annexation applications by municipalities wanting to plan their future growth and service needs, to ensure their economic viability, and to provide the best form of local government for the local community.

Boundary issues between municipalities can be resolved using several processes, including the Municipal Boundary Negotiation Act, the Municipal Act, various regional acts, or special legislation.

- A municipality may, by by-law, apply to the Minister of Municipal Affairs to initiate proceedings under the act.
- The minister may determine and investigate the issues, identify the party municipalities (those with a substantial interest in the matter), and report to them.
- If the report indicates that the party municipalities have reached an agreement, the province may implement the agreement by order-in-council or, in certain circumstances, by legislation.
- If there is no agreement, the minister may direct the party municipalities to appoint members to a negotiating committee. The minister will appoint a chief negotiator to chair the committee and to report its results to the minister and the party municipalities.

- After receiving the report and allowing time for public meetings and council consideration, the minister has several options. If the councils accept the report, the minister can recommend implementation to Cabinet. If they do not, the minister may refer issues back for further negotiations, may refer issues to an Issues Review Panel for advice or to the Ontario Municipal Board for a hearing and recommendations, or may take other appropriate action.

A municipality in northern Ontario may wish to annex land in an adjacent unorganized area. This would normally happen when the area has been developed and the people living there use the municipality's services and are really part of the local community. The municipality applies to the OMB for approval to annex the unincorporated area.

MUNICIPAL ASSOCIATIONS

- In Ontario there was in the past mixed experience with municipal-provincial consultation. One complication was the number of separate municipal associations, their diverse interests, and their differences of opinion on many issues. It was often difficult, for example, to reconcile the views and concerns of the large urban municipalities that contain most of Ontario's population with those of the small, rural municipalities that represent the majority of municipal corporations.

To strengthen inter-municipal communication and to deal better with the issues and concerns of local governments throughout Ontario, the Association of Municipalities of Ontario (AMO) was established in August 1981 by amalgamating four municipal organizations. AMO is a non-partisan organization that promotes the value and status of municipal



government as a vital and essential component of the intergovernmental framework of Ontario and Canada. It acts as a municipal government collective and through a co-ordinated and co-operative effort is organized to provide a strong voice for municipalities.

AMO holds regular meetings with the Minister of Municipal Affairs and various other provincial ministers to discuss issues of mutual interest. Those meetings and ongoing contact between AMO and the Ministry of Municipal Affairs are co-ordinated through the ministry's Strategic Planning and Intergovernmental Relations Branch.

About 700 of Ontario's 832 municipalities are members of AMO. Eighty elected and appointed officials sit on the governing body. Because of its diversity, this body reflects a broad range of municipal interests. Among its members are representatives from the sections of the association, including:

- Association of Francophone Municipalities of Ontario (AFMO)
- County and Regional Section
- Large Urban Section
- Northern Ontario Section - consisting of members of the executive committees of:
 - The Federation of Northern Ontario Municipalities (FONOM)
 - The Northwestern Ontario Municipal Association (NOMA)
- Rural Section
- Small Urban Section.

Association Affiliates

- Association of Municipal Clerks and Treasurers of Ontario (AMCTO)
- Association of Municipal Tax Collectors of Ontario (AMTCO)

- Municipal Engineers Association
- Ontario Municipal Administrators' Association
- Ontario Municipal Personnel Association
- Ontario Municipal Social Services Association
- Society of Directors of Municipal Recreation of Ontario.

The Municipal Directory lists most of the municipal associations, with contact names and telephone numbers.

MINISTRY OF MUNICIPAL AFFAIRS

... Originally established as the Department of Municipal Affairs in 1935, the ministry has undergone a number of organizational and name changes. The ministry currently has two divisions that deal regularly with municipalities, the Municipal Policy Development Division and the Municipal Operations Division.

The Municipal Policy Development Division is responsible for issues related to municipal finance, local government organization, provincial policies on land use planning, the planning approvals process, and provincial/regional settlement patterns. The division is also responsible for policy on the functions, structure, procedures, and legislative authority of municipalities. These responsibilities are managed through the following branches:

- Municipal Finance Branch
- Municipal Government Structure Branch
- Municipal Planning Policy Branch
- Provincial Planning Branch

The Municipal Operations Division designs, develops, co-ordinates, monitors, and delivers programs that implement ministry policies. The division consists of six branches:

- Community Development Branch
- Field Management Branch
- Municipal Boundaries Branch
- Plans Administration Branches (Central and Southwest, North and East)
- Program Services Branch

FIELD MANAGEMENT BRANCH

... The ministry has 10 regional offices that provide service delivery at the local level. Field staff assist with local planning issues, municipal government structure studies, and boundary negotiations; provide financial, administrative, and other advisory services to support municipal decision-making; and administer a variety of grant programs.

Ministry of Municipal Affairs Field Management Branches

Cambridge	150 Main Street Cambridge, Ontario. N1R 6P9 (519) 622-1500
Central	47 Sheppard Avenue East Suite 207 Willowdale, Ontario. M2N 2Z8 (416) 250-1251
Guelph	147 Wyndham Street 4th Floor Guelph, Ontario. N1H 4E9 (519) 836-2531
Kingston	1055 Princess Street Kingston, Ontario. K7L 5T3 (613) 545-4310

London	495 Richmond Street 7th Floor London, Ontario. N6A 5A9 (519) 673-1611
North Bay	126 Lakeshore Drive North Bay, Ontario P1A 2A8 (705)476-4300
Orillia	200 Memorial Avenue Suite 117 Orillia, Ontario L3V 7R3 (705) 329-6006
Ottawa	244 Rideau Street Ottawa, Ontario K1N 5Y3 (613) 566-3711
Sudbury	850 Barrydowne Road 3rd Floor Sudbury, Ontario P3A 3T7 (705) 560-0120
Thunder Bay	435 James Street South P.O. Box 5000 Thunder Bay, Ontario P7C 5G6 (807) 475-1651

There are several other ministries that deal with municipalities and most have regional offices. For information on all ministries and their branches, consult the Kwik Index and the Government of Ontario Telephone Directory.



References - Section 5

Ministry of Government Services, annual publications:

- *Kwik Index*
- *Government of Ontario Telephone Directory*
- *Ministerial Responsibility for Acts*

Municipal Directory, published annually by the Ministry of Municipal Affairs.

This directory provides a glossary, an alphabetic listing of municipalities by upper tier with telephone numbers and addresses, the names of the heads of council and senior officials, statistical information on area, population, and households by upper and lower tier, a list of MPPs, and a list of the major municipal associations with their addresses and telephone numbers.

Tindal, C.R. *You and Your Local Government*.
Toronto: Ontario Municipal Management Institute, 1988.

Tindal, C.R. and S.N. Tindal. *Local Government in Canada* (2nd edition). Toronto: McGraw-Hill Ryerson, 1984.

... CONCLUSION

We hope that this manual has provided you with an overview of the many duties and challenges you can expect to face. The manual is no substitute for on-the-job-training, of course, but you may want to keep it handy for use as a quick source of information. For more detailed information on any aspect of your duties, you should consult the reference sources listed at the end of each section, talk to municipal staff, or call the nearest office of the ministry's Field Management Branch.

Best regards for an enjoyable and rewarding term in municipal office.

THE PROVINCE OF ONTARIO IN COUNTIES,
DISTRICTS, REGIONAL AND DISTRICT MUNICIPALITIES



Notes:

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Director
Program Services Branch
Ministry of Municipal Affairs
13th Floor, 777 Bay Street
Toronto, Ontario
M5G 2E5

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